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MINISTRY OF TRANSPORT.

RATES ADVISORY COMMITTEE.

GENERAL REVISION OF RAILWAY RATES AND CHARGES.

PROCEEDINGS OF MEETING

HELD ON

8TH JUNE, 1920.

TENTH DAY.



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MINISTRY OF TRANSPORT.

GENERAL REVISION OF RAILWAY RATES, TOLLS AND CHARGES.

OLD HALL, LINCOLN'S INN, W.C.2.

Tuesday, 11th May, 1920.

Terms of Reference:—

"The Minister having determined that a complete revision of the rates, fares, dues, tolls and other charges on the railways of the United Kingdom is necessary, the Committee are desired to advise and report at the earliest practicable date as to:—

- "(1) The principles which should govern the fixing of tolls, rates and charges for the carriage of merchandise by freight and passenger train and for other services.
- "(2) The classification of merchandise traffic, and the particular rates, charges and tolls to be charged thereon and for the services rendered by the Railways.
- "(3) The rates and charges to be charged for parcels, perishable merchandise and other traffic conveyed by passenger train, or similar service, including special services in connection with such traffic."

The evidence is issued in uncorrected form, and any inaccuracies should be notified to the Secretary, Rates Advisory Committee, Ministry of Transport, Gwydyr House, Whitehall, S.W.1.

MINISTRY OF TRANSPORT.

RATES ADVISORY COMMITTEE.

GENERAL REVISION OF RATES AND RAILWAY CHARGES.

PROCEEDINGS OF MEETING

HELD ON

8TH JUNE, 1920.

PRESENT :—

F. GORE-BROWNE, Esq., K.C. (*Chairman*).
SIR WALTER W. BERRY, K.B.E.
W. J. DAVIS, Esq.
W. A. JEPSON, Esq.
L. A. MARTIN, Esq.
W. M. ACWORTH, Esq.
S. J. PAGE, Esq. (*Secretary*).

TENTH DAY.

MR. J. H. BALFOUR BROWNE, K.C., appeared for The Federation of British Industries.

SIR JOHN SIMON, K.C., SIR LYNDEN MACASSEY, K.C., MR. BARRINGTON WARD, K.C., and MR. BRUCE THOMAS appeared for the Railway Companies' Association.

MR. ROWLAND WHITEHEAD, K.C., and MR. G. W. BAILEY appeared for the St. Helens and Widnes Manufacturers and Traders.

MR. ROWLAND WHITEHEAD, K.C., and MR. EDWIN CLEMENTS appeared for the Iron and Steel Federation.

MR. G. H. HEAD appeared for the Livestock Traders' Association (instructed by Messrs. Maxwell, Brownjohn & Co.).

MR. JACQUES ABADY (instructed by Sir Thomas Ratcliffe-Ellis) appeared for the Mining Association of Great Britain.

SIR ROBERT ASKE (instructed by Messrs. Botterell & Roche and Hill Dickinson & Co.) appeared

for the Chamber of Shipping of the United Kingdom and Liverpool Steamship Owners' Association.

MR. F. G. THOMAS (instructed by Messrs. Francis & Calder) appeared for the Association of British Chambers of Commerce.

MR. W. A. WARDLEY (instructed by Messrs. Adler & Perowne) appeared for the Association of Railways.

MR. EDWIN CLEMENTS also appeared for the Mansion House Association on Railway and Canal Traffic.

MR. JACQUES ABADY (instructed by Messrs. White and Leonard) appeared for the Federated Home-Grown Timber Merchants' Associations.

MR. F. D. MORTON (instructed by Messrs. Bower, Cotton and Bower) appeared for the London Central Markets' Association.

MR. A. MOON (instructed by Bernard Wicks) appeared for the Association of Smaller Railway Companies.

Mr. Abady: Sir, since the last hearing I have been instructed to appear for the Federated Home Grown Timber Merchants' Association. You will no doubt recollect that a reference was made to their case at the first meeting, and I hope to be afforded an opportunity during this stage at a later date to present their case, while, of course, the question of measurement and weight of timber I understand will fall to be dealt with in the second stage.

Chairman: Thank you.

Mr. Moon: Sir, I am appearing on behalf of the Association of Smaller Railway Companies.

Mr. Morton: Sir, I appear on behalf of the London Central Markets' Association. I understand the Corporation of London are not to be separately represented, but the London Central Markets' Association are to be their spokesman.

Chairman: I understand that you want to deal with the question of meat and food.

Mr. Morton: Meat, live stock and poultry, and especially the question of London having a preferential rate.

Chairman: There is one little matter I want to clear up. I have a letter from a Mr. Hughes, a witness who appeared from Peak, Frean and Company, and he takes note that when Mr. Bilborough, on May 20th, was giving evidence, in cross-examination at question 221, a question was put to him which would imply that it was the practice of biscuit manufacturers to take advantage by carting full loads of biscuits and leaving the railway company to deliver the inconvenient small lots of empties. He wishes to say that, so far as Messrs. Peak, Frean are concerned, that is not the fact; that they perform all their own

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[Continued.]

cartage, large and small lots, and he wants that to be noted.

Then there is another matter I want to say a word or two about; it is a matter which will not come up to-day, but I did, at an earlier stage, put forward a suggestion with regard to the method in which the finance might be calculated, and I referred to possibly assessing the sum with reference to the dividends that were paid by the Companies. I think I said that those dividends might be used as an index. Having regard to a remark which Sir John Simon made, I have been looking into the figures since, and I think it would probably be more satisfactory if instead of dividends one referred to net earnings, and in particular the figures struck me with relation to the Great Central Railway Company. I think the latest Board of Trade Returns which give us the net earnings are those for the year 1915, and from them I took out certain items which give one rather a curiously interesting comparison between two or three railways. I find that the capital of the Great Central Railway is £54,150,000, the capital of the Great Eastern is £54,500,000, and the capital of the London and South-Western Railway is £57,093,000; so that those three railways may be fairly treated as comparable with regard to their capital. I find further that the net earnings of those three Companies for the year 1915 were: The Great Central £2,218,000, the Great Eastern £2,173,000, and the London and South-Western £2,100,000, so that not only is their capital nearly identical, but their net earnings are nearly identical; but the curious result as regards dividends is that upon the ordinary capital the Great Central pays nothing, the Great Eastern pays 2½ per cent., and the London and South-Western paid in that year 5½ per cent. So that you get the curious result that with equal capital and equal net earnings the results in dividends upon the ordinary shares are very different. No doubt the explanation could be found in the figures, that the Great Central Railway Company has a much larger amount of debentures and preference and guaranteed stock than the other railway companies. I think the Great Central Railway also has some Lloyds' Bonds which the other railways have not, but it might be a great injustice to the Great Central Railway if one looked at the dividend paid upon the ordinary shares and not at the net earnings. So that I should be inclined to substitute in my remarks net earnings for dividends as an index of what might be treated as a fair amount which can be attributed to each of those railways, and I carefully say as an index only and not as being conclusive, because Sir John Simon pointed out that there may be other important elements to be taken into account. There again the Great Central Railway happens to give us an admirable example of something which we must not ignore. One knows that they brought their main line to London at a comparatively recent date, and therefore, it must have taken them some time to derive the fruits of that big enterprise. Just casting back my eye upon some figures, I find that their net revenue in 1901 was only £1,150,000, whereas in 1915, as I have just said, it was £2,218,000, showing a very rapid improvement during those 12 years. If one looks at it in the form of dividend one finds that in 1905 they only succeeded in paying dividends so far as their 1881 Preference Stock at 1½ per cent.; in 1905 they were paying 3¼ per cent. on their 1889 preference; in 1906 they were beginning to pay on their 1891 Preference, and in 1915 they were paying 2 per cent. on their 1894 Preference. Of course one cannot ignore the fact of a railway company rapidly improving, that is one of the elements which has to be taken into account in considering what is fair to them. I just mention that because some of my own language in regard to the Great Central Railway Company was misleading as I used it, and that it would be right for me to qualify that. However, that is not a matter which will come before us

to-day, and I have taken this occasion rather with a view that it might get upon the note and be considered by those who are interested before we come to discuss it. I do not know that it will ever be our duty to say what is the right percentage which ought to be allowed upon the capital of the railway companies, I think that is a matter for the Cabinet and not for us, but possibly something will be said in the course of the case about the position and the manner in which the railway companies ought to be treated with regard to being put in a sound financial position. I only want to refer to one other thing. There was a lecture delivered by Mr. Cramond at the Bankers' Institution yesterday, which is reported in this morning's papers, and I note that he remarks that one of the principal elements in getting the world back into a proper position for conducting its business is the cost of transport; and Mr. Cramond says that it is unfortunate that persons interested in trade are inclined to refuse to railway companies economical rates and to endanger their solvency. I would like to say that, so far as the traders of Great Britain are concerned, they have shown not that short-sighted, had view of the functions of a railway, but they have taken the long view and been quite clear in saying that you ought not to strangle transport by uneconomical rates, and it is much to the credit of their heads as well as their hearts that they see the importance of every industry in this country having a fair chance, and that their own interests are linked up with those of the railways. I do not know that it is my business to comment on that, but the traders have taken that long-sighted view and I am very glad it is so.

Mr. Balfour Browne: I do not know whether on what you have just said I might say something.

Chairman: If you please.

Mr. Balfour Browne: You will remember, I dare say, that when you suggested a basis for railway rates, you said, as one of the parties trying to help the others, "I wondered if this was a simple scheme." Only in the same sense as one of the parties trying to help the other, we, the Federation of British Industries, have very carefully considered the scheme you then proposed, and, to some extent, we have modelled a clause upon your clause, altering in some respects the wording that you proposed.

Chairman: I was not proposing to discuss that matter now; I really only spoke of it as early as this because I wanted to get it upon the note so that people might have time to think about it before we did discuss it.

Mr. Balfour Browne: Very well, at any time you wish. It occurred to us that the word "dividend" was not a happy one, and we had adopted the words "net earnings," of course, which is perfectly fair, and that would cover the Debenture Stock as well as the Preference and Ordinary stock of a company. I am bound to say, as I said then, that the more we consider it the more we are convinced that your suggestion will form the basis of a proper provision to find what is really due to the railway companies as an economic matter between the traders and ourselves.

Chairman: We will discuss that matter at a later date; I am much obliged to you. I do not know whether it will be convenient to take first as our discussion the question of the tribunal. The evidence that has been given before us has indicated two or three quite different lines. There is a clear indication on the part of some that they desire to see the Railway and Canal Commission remain untouched as the main authority for determining questions between railways and traders. There is a second view that there ought to be a new tribunal, and that second view may be sub-divided into two parts: one that the new tribunal should replace the Railway and Canal Commission altogether and that the Railway and Canal Commission should disappear, and the other that the new tribunal and the railway and Canal Commission should divide between them the functions of determining questions between traders and the railway companies. I would like to know

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[Continued.]

now if you will tell me what are the considered views. We will begin with the Federation of British Industries and then with the Association of British Chambers of Commerce upon which is the better course of those to pursue.

Mr. Balfour Browne: Your suggestion was set out first upon page 17 of the Notes of the 19th May, and then you were good enough also to print it in the Appendix to the 1st June, upon page 33, and I think I can answer your question. I think, I am bound to say, that a suggestion which was made upon the last day of the sitting by Mr. Jepson with regard to the constitution of the tribunal—I do not know whether it was merely in the form of a question or a suggestion—has modified our views, but I will come to that immediately. If you will take page 33, what we would like to do is to adopt No. 2, which is at the bottom of the first column: "That a new tribunal shall be constituted consisting of traders and railway men, presided over by an independent chairman, and shall perform all the functions of the Railway and Canal Commission (which shall be abolished), and in addition shall fix the rates, tolls and charges, and the conditions upon which goods shall be carried." Therefore we ask you to accept that instead of number 1, which is just above it. Number 3 would then become unnecessary, and with regard to the functions of the new tribunal we say this, that all those functions should be transferred to the new tribunal that are at present exercised by the Railway Commissioners. There are two matters only; the first eight were, of course, relegated in your alternative to the tribunal. The last seven were apparently to go to the Railway and Canal Commission if it continued to exist. We think all this should go to the tribunal as constituted in the way I will speak of immediately except with regard to 5 and 7. We do not see that a Court should be established to settle disputes between two railway companies. It has proved rather futile in relation to the Railway Commission. In the early days there were certain rating cases submitted by the consent of certain rating authorities to the Railway Commissioners for decision, but latterly the traders do not seem to think they should be the arbitrators. Then the last seven, "To act as arbitrator in any case which may be referred to it by the Board of Trade or Minister of Transport," again seems to us to be contrary to the policy of Parliament. When Parliament has said that a matter should go to arbitration it intends practically to oust the jurisdiction of the Courts. Instead the Board of Trade has always, when they have an arbitrator to appoint, under sub-section 5 of the Provisional Order, appointed the Railway and Canal Commission, which is a Court. Therefore neither 5 nor 7 seems to me to be necessary to be transferred to any tribunal. All the others we say should be transferred to the new railway tribunal and that the Railway Commission should therefore be abolished. We think, of course, that the permanent tribunal should, if you turn over the page, be constituted in the way we have suggested, and you were good enough to set out that suggestion. There were two suggestions that you made: one, "Of an independent Chairman and a small number of persons experienced in trade and in railway matters devoting their whole time to the business of the tribunal." The other was, "Of an independent Chairman and a panel of traders and railwaymen continuing to be free to carry on their respective occupations from which panel the necessary number of persons would be summoned to constitute the tribunal on each occasion when it shall have occasion to sit. In this case the panel would presumably be unpaid." There were obvious disadvantages in both of those suggestions. You suggested, or somebody suggested, I am not sure who it was, that there was an advantage in having continuity upon the tribunal. That would in our first view have been secured by the permanent impartial Chairman, but upon reconsideration of the matter we thought that there was something to be

said for even having a permanent and continuing element in the Court, and it was in consequence of that that I have referred to what Mr. Jepson said upon page 10 of the notes of the ninth day of your proceedings on the 3rd June, in the second column. You were asking some questions of my learned friend, Mr. Whitehead, I think, when he was speaking. "You might ask your witnesses to be considering an alternative, which is this. Suppose the president were a gentleman with legal training, and then there were two or four permanent business men connected with him, with a panel also of other people who might be drawn upon to deal with and bring into the body of the Court information with regard to the particular trade or business concerned in the matter in dispute." My learned friend said, "Yes." Then Mr. Jepson said, "So you would get the benefit of continuity and you would get the benefit from the panel of having people engaged in the particular business."

That did seem to us to combine, I do not know whether it is unfair to assume that is a suggestion or it may be a question to elicit something, but that did seem to us to be an exceedingly happy combination of the two principles, that if you had an impartial Chairman, I will not say whether he is to be a lawyer or any other person, but if you got an impartial Chairman and you got one gentleman experienced in railways who will be a permanent member of the Court, one gentleman who has been in connection with trade who would be also a permanent member of the Court, and then if you had from a panel appointed, say, by the Board of Trade, on the suggestion of the railway companies and of the traders, a certain number of gentlemen who were actually connected with trade and with railways it would make a very good tribunal. So to that extent we would propose, if it meets the views of yourself and your colleague, to modify the suggestion we have made that the tribunal should be as you suggested upon page 34 in the second alternative.

Mr. Davis: Do you mean a general panel which can be tapped or asked for, a certain portion of it interested in a certain question but not the whole panel. Do you mean that? The panel may be 14 persons.

Mr. Balfour Browne: I think there should be a panel and that the panel should be chosen, as I say, on the suggestion of the Chambers of Commerce and Associations of Traders and also of the railways; that panel would probably represent iron and steel, groceries and all sorts of things, and upon that particular panel there should be a gentleman chosen for the particular case who had had experience of that particular trade, and also chosen from the railway side of the panel who had experience of railways, that these should be the non-permanent members of the tribunal, but that the continuity should be got by the three permanent members of the tribunal.

Mr. Aicorth: You mean that they would be only members of the tribunal while on it and not mere associates.

Mr. Balfour Browne: They are to be members of the tribunal and have an equal voice with the permanent members. That was our idea. I do not know whether that is Mr. Jepson's suggestion, that is our suggestion upon his suggestion.

Mr. Jepson: That was in my mind, that is quite right.

Mr. Balfour Browne: In that case we would be willing to fall in with that suggestion and accept such a tribunal. If that tribunal were established there is no necessity to keep the Railway and Canal Commission. I do not say anything against the present constitution of that body, but if you had an impartial Chairman, that Chairman, I take it, might be a lawyer. He ought not to be a railway man, he ought not to be a trader, and I do not think he ought to be an ecclesiastic, but, barring that, I think he ought to be possibly a gentleman who has had experience of the laws of evidence. It might be a very

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[Continued.]

useful thing to have a lawyer as the permanent impartial Chairman, but, having constituted the tribunal in that way, where is the necessity of the Railway Commission?

Chairman: A good many legal points would come before this tribunal.

Mr. Balfour Browne: There are not many legal points. It is quite true, I think, you had it in your mind that the question of undue preference might be called legal. I do not think it is really, it is really a trade question. There is no question about a preference. It is obvious if one trader is charged 20s. and another 10s. there is a preference, and the only question is: Are there any trade considerations in the mind of the railway company which justify the difference of those two rates? That is not a legal question, with great respect, I think it is a trade question. We have no objection to keeping the Railway Commission if you think it ought to be kept merely to decide a special case if this tribunal is, in our view, to have the means of stating, just as in the Canadian case we propose to give this tribunal, if it is established, the power upon any legal matter to state a case for the opinion of a Superior Court, but that Court could be any one of the Courts—I was going to say Westminster, thinking of the old days—but any of the Courts over the way. I do not think it necessary to keep a special tribunal to deal with those particular matters. Therefore, in answer here to the first question, I say one tribunal, that is to say, the Railway Tribunal, as it is called, constituted in the way I have suggested, absolute masters of the whole question of fact, but to have the power to state a case for the opinion of a Superior Court on any question it considers a question of law. Then I go further upon your suggestions, which are still upon page 34, "The nomination of the permanent members of the tribunal in the one case or of the panel in the other case would presumably be in the hands of the Minister of Transport, acting after obtaining the advice of the Railway Association"—that seems to me a perfectly proper suggestion if I may say so without impertinence—"so far as regards the railwaymen, and of the leading Associations or Chambers representing traders so far as the traders are concerned." There we think, or some people I am speaking for think, that while the Minister of Transport should have the appointment of the panel for railways, probably it would be better for the Board of Trade to have the nomination of the traders, but that is a matter of very great indifference to us. It goes on to say, "There appears to be a general consensus of opinion that there should be local advisory committees consisting of an equal number of railwaymen and traders, who should act as conciliators (without power to give decisions binding on the parties). It seems that the number of these Conciliation Committees might be about 12 or 15, set up in the principal centres of trade. The representatives of the traders might well be appointed by the Minister of Transport acting after obtaining the advice of the Principal Chambers of Commerce."—I should use your words again, Associations or Chambers, as you had them in the first paragraph—"mines and agriculture in the district in question, and that the railway representatives might well be the local Goods Managers of the railways serving the district." There seems to be no objection to that. I only want to say as you said traders do seem to think that there would be a good chance of conciliation if some such tribunal, not a tribunal, but some such conciliatory Committee were appointed. I see no objection to it, and we are entirely in favour, if your Committee approves, of having such a conciliatory Committee.

Mr. Jepson: Many of the witnesses have misunderstood themselves that there is no necessity compulsorily to set up such legal tribunals, that their experience has been that there is no difficulty in Chambers of Commerce Trade Associations meeting

the railway companies either locally or centrally in London. Is it suggested from your side that these should be compulsorily set up or that the thing should work automatically as it does now?

Mr. Balfour Browne: All I can say is, that we had not in the first instance considered this until the traders expressed their own views that some such body should exist for the purpose of conciliation. We are of opinion that that is right, that is as far as we have gone. If it is unnecessary to do it by enactment so much the better, but, at the same time, I want to point out that that is to be merely a conciliatory tribunal. It is not to give a decision against the trader or against the railway company, because that might prejudice either the traders or the railway company when we went to the tribunal which is to determine the case. It is to try and conciliate, to bring people to an agreement, and, if they succeed, good, but, if they have failed, then their frictions are at an end. Then the only other thing I want to direct your attention to in the next clause is "The proposal appears to be that if any trader has a grievance he is to be entitled to submit it to the local Conciliation Committee." I should read in there, "He is to be entitled but he is not to be compelled." I do not think there ought to be any compulsion on a trader or a railway company to go before that Conciliatory Committee if they determine to go before the tribunal which I hope this Court will establish. Then the rest I accept willingly except in the last clause of all, "It is not to be considered that the Central Tribunal is to take the place of the ordinary Courts in hearing and determining disputes where the question is merely one of fact (e.g., the amount of damage payable for goods lost or injured, or whether a railway company has or has not been guilty of negligence) or purely a question of law, there being, however, the exception that it will decide the general question whether a charge or a condition is reasonable. For the enforcement of ordinary legal rights the parties must have recourse to the Courts of Law." I should like to add to that, if that were to become a clause, "In any case which is not specifically provided for in this Act." I think that is fair. I do not want, for instance, a small debt to come before the tribunal, it must go to the County Court Judge or whoever is the right tribunal, but anything that is specifically provided for in the earlier part of the section should still be saved hearing and go before the tribunal. I do not know whether I have answered your question sufficiently.

Chairman: I think you have. May I take it then that is the considered opinion of the Federation of British Industries.

Mr. Balfour Browne: That is the considered opinion of the Federation of British Industries. I should like to say very much with regard to what you asked that Mr. Morton the other day seemed to think that we were not in a position to speak for the Federation. I had better refer to what he said. If an explanation is to be made at some time it is as well to be made now. I think it is on the last day of the enquiry, page 16 of the 3rd June. Mr. Morton said in answer to Question 3112, "You put to-day, or any day during the hearing here, a question to Mr. Balfour Browne and ask him if he will consult his friends and reply to-morrow. He does. My own firm is a member of the Federation of British Industries and we are members of the Mining Association, and we are members of the Federation of Iron and Steel. Of course, it is quite impossible that in the short period of 24 hours Mr. Balfour Browne could adequately represent the views of so many constituents." Then upon a subsequent page, page 25 at the bottom of the first column, in cross-examination I think it was, he says, "Well, the Federation of British Industries has taken very large ground. I am not just exactly sure whether the whole position of the Federation, as it has been developed before this tribunal, was really even in embryo, in the minds of the Federation at

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[Continued.]

the time when the respective letters were sent." Really, that is a mistake upon Mr. Morton's part, and I only want to say how very carefully this matter has been considered. It has been before the Federation of British Industries for the last two years. As you know, we prepared a Bill which was introduced into Parliament which embodied our views with regard to what should be done with regard to the future of railways. Just at the same time, of course, the Minister of Transport Elect introduced his Bill and it was impossible to proceed with the Bill we had proposed having regard to that, but it was during a whole winter that the Federation was very carefully considering the matter. Let me tell you what further was done. The Federation has for the last two years had a large Committee representing 70 or more trade associations, all the associations who are interested in transport questions, considering the broad questions of the principle upon which the Committee has now been sitting and the matters which you are investigating, and we considered many of our conclusions upon these principles in the Bill which was introduced last year by Mr. Marshall Stevens. The case which we incorporated in our reply to the Minister of Transport was based on the deliberations of our Transport Committee, and also upon special enquiry to everyone of the trade associations belonging to us, and we have, we can say with confidence, not expressed any opinion upon any question which has arisen during the enquiry which would meet with opposition from any substantial body of the members of our Association. I think it only right to say that whenever you have asked me a question which the Federation have not considered I have taken time to consider it, although I might have answered it off my own bat; we have called our Committee together to consider the question. So that you may take it really I think that we are a thoroughly representative body and that the views that we have expressed—I am bound to say the only view that has not been before the larger Committee is the one I have been expressing this morning which was suggested by Mr. Jepson on the last occasion as to the constitution of the tribunal, that is the only matter that has not been before the larger Committee of the Federation.

Mr. Acworth: As I understand your proposal, it is that this new tribunal shall finally decide?

Mr. Balfour Browne: Yes.

Mr. Acworth: You appreciate that under the Act under which we are sitting this body advises the Minister, and the Minister if he chooses can take no notice of the advice?

Mr. Balfour Browne: Absolutely.

Mr. Acworth: I want you to have it quite clear that is the proposal to alter the position under the present Act by which we are sitting here.

Mr. Balfour Browne: With great respect I am not proposing to alter the Transport Bill of last year at all, I am rather alluding to the time when that Transport Bill will cease to exist.

Mr. Acworth: I quite understand that, but I mean to say you propose as a permanent system a system that is quite different from the temporary system that does exist.

Mr. Balfour Browne: Quite.

Mr. Acworth: I am not arguing it, of course, I only want to be quite clear that is your meaning.

Mr. Balfour Browne: Perhaps I see what is in your mind. Suppose an emergency arises after the Minister of Transport has passed away, and that there is no summary power of increasing rates as he did on the 15th January, then I say the matter must be determined, not by the tribunal but by Parliament. That is where we claim that your tribunal is to fix the maximum rates, the other tribunal is to fix the actual rates, alter them from time to time according to circumstances within the maximum, and if the maxima are to be altered, as they might have to be if wages went up in the extraordinary way they have in the past, that should be done by Parliament if the Minister has passed

away. So long as we have a Transport Minister he has the whole power on the advice of this Committee to alter the rates in any way he likes.

Mr. Acworth: Surely not, he is a permanent person, the Act of Parliament made a permanent Transport Ministry.

Mr. Balfour Browne: Suppose it made the Act permanent—

Mr. Acworth: It is a permanent Act.

Mr. Balfour Browne: I thought not.

Mr. Acworth: In reference to rates the Minister has no power to alter them after August in next year.

Mr. Balfour Browne: That is what I had in mind.

Mr. Acworth: Suppose for the sake of argument nothing was done in the meantime, the position as to rates would relapse to the pre-war situation and every company would be required to come down to its maximum.

Mr. Balfour Browne: Quite.

Mr. Acworth: My point is this, the scheme for varying rates set up under the temporary provisions of the Transport Act is that the Minister alters them on advice.

Mr. Balfour Browne: Quite.

Mr. Acworth: Your proposal is that after the temporary powers have lapsed the tribunal shall alter them and the Minister shall have nothing to say to them.

Mr. Balfour Browne: That is true, that after August of next year his power having lapsed the only power to alter rates which have been fixed by him, because it will be his Bill, I suppose, in Parliament which fixes the rates, shall be the tribunal.

Chairman: I would like to hear the Association of British Chambers of Commerce next.

Mr. F. G. Thomas: Sir, on behalf of the Association of British Chambers of Commerce, I am not in a position to place you in possession of their considered opinion upon this question of the constitution and powers of the tribunal. This matter was considered at a Council Meeting of the Chambers of Commerce on Friday and the views which I am putting before you now were the views which were then agreed to. I would say at once that we are not able to go as far as my learned friend, Mr. Balfour Browne, in the view that when the tribunal is appointed there would be no useful functions left before the Railway and Canal Commission. Of course, in the view we put before you as to the relative functions of the two bodies one has to determine the constitution of the tribunal. It is bound up with that. A tribunal which is constituted in one way should, in our view, have very different functions from the tribunal which is constituted in another. Therefore, what I am suggesting on behalf of the Chambers of Commerce as the relative powers of the two bodies must be taken to have relation to a tribunal which is constituted in the manner which commends itself to the Chambers of Commerce. Therefore we wish to adopt the alternative, No. 3, which is set out on the top of the second column of page 33 of the proceedings of the 1st June. Then when we come to the proposed bestowal of powers upon the new tribunal we wish that all the powers that are set out in 1 to 8 on that page should go to the tribunal. There is, of course, some little difficulty with regard to the first three powers. The position, as I understand it, is that you and your colleagues on the Advisory Committee have been asked by the Minister of Transport to advise him as to these actual rates which are to be charged upon railways. The classification and quantum of the rates form the second part of the inquiry before this Committee, and, as we understand it, it would be the recommendation of this Committee which would establish the standard rates and the functions of the tribunal would be, when those rates have been established and become the actual rates, to take over the duty of controlling any variation in them.

Chairman: I think you are right. Probably what would happen in fact would be that the Act of Parliament, which amongst other things sets up this tribunal, would fix the original rates and classifica-

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tions, and that would be done upon the advice of this Committee; at any rate, so far as the introducing the Bill, Parliament would finally say whether it accepted the proposals or not. I think you are right in saying that the new tribunal as a new tribunal would find a set of rates in existence.

Mr. F. G. Thomas: Then upon that the view of the Chambers of Commerce is in entire accord with that which has been put before you by Mr. Balfour Browne, that the tribunal should have absolute powers. It should not be a question of advising the Minister, but wherever any increase of those existing rates was proposed the question whether the rates should be increased or not should rest absolutely with the tribunal. Then the other powers that are set out there would go to the tribunal, and, assuming again that the tribunal is of the character and constitution that we approve, we should be quite prepared further to refer to it the powers No. 1, No. 4, and No. 6, which are reserved to the Railway Commissioners in this proposal. I think our view would be that questions of fact upon matters of dispute between traders and railway companies which were exclusively matters of fact would all go to the tribunal. Where they were mixed questions of law and fact they would. We should be willing to see them go in a very large number of cases, and in certain matters, where questions of facilities were involved, we should like those cases to go to the tribunal as well; and, of course, where there was a definite question of law to be decided, a power to refer to the Railway Commissioners and through them to the Courts of Law, whatever Court it is, as the case may be. Assuming the Chairman of the tribunal was a lawyer, we should see no objection to a wider class of cases going to the tribunal than would go if a different constitution were adopted. The only addition I should like to make is that it has been suggested that in addition to the powers which are there set out, the question of some difficulty, the vexed question of determining what articles should be packed, and what is reasonable packing, is one of the matters that might be referred to the tribunal. I think that brings one at once to the question of constitution; upon that we entirely approve in principle the suggestion which fell from Mr. Japson and which has been adopted by my learned friend, Mr. Balfour Browne, and we are anxious to see a tribunal in existence which shall be of a permanent and continuous character. We hope that during this period of transition, which must be some years, there must be a period of abnormal variation in trade conditions and in railway rates, this tribunal should sit almost continuously, so that these matters should be dealt with without undue delay. That is, of course, only possible with a permanent body. We should like therefore to adopt the first proposal of an independent Chairman and a small number of persons experienced in trade and railway matters, devoting their whole time to the business of the tribunal and to be paid for their services. As regards the question of a panel we are in entire agreement with the suggestion that there should be this panel of representatives of the railways and representatives of different trading interests, who could be drawn upon to sit as permanent workers of the tribunal upon matters of which they would have expert knowledge, either through being connected with a railway company which specially served that particular trade or as representatives of the trade. I think we differ somewhat from Mr. Balfour Browne's views on behalf of the Federation of British Industries as to whether members of that panel should be actual members of the tribunal or should sit in the capacity of assessors. We attach so much importance to the question of continuity and consistency in the decisions of the tribunal that we think it would be a pity to make those assessors actual members of the tribunal. We believe all the advantages can be obtained by their sitting as assessors, in that way putting the tribunal in possession at first hand of the special circumstances affecting the particular dispute which is before them.

We are most anxious that the procedure before the tribunal should be a simple one and an inexpensive one; a great deal of the length and costliness of proceedings depends upon the necessity of bringing expert witnesses and witnesses who can deal with all the matters, and we feel that if the permanent members of the tribunal were in the position of being able to call in on any special case the advice of these representatives of railways and of traders, who would be appointed because they had both the confidence of the railway companies, on the one hand, and the traders on the other, I think that would immensely facilitate their labours and enable the results of the work of the tribunal to be much more satisfactory than it would otherwise be.

Chairman: Would you make it necessary that members of the tribunal should be present on each occasion, or would the permanent members constitute a Court which would be entitled to call in additional members when they pleased.

Mr. F. G. Thomas: Upon that I think our view would be that it should be the regular procedure that the Court should have the advantage of assessors; I think we should like that. I am not saying that there may not be some cases where the need would not exist, and it would not be necessary for the tribunal to trouble the assessors to come, but I think our view is that the regular procedure should be that the tribunal should sit with assessors.

Chairman: A difficulty which occurs in all arbitrations and such matters is when you have all time men you can get them together whenever you please, because it is their duty to attend. If you ask two busy men to come perhaps from a distance it is not fair not to consider their convenience, and it has to be done, they cannot always come. It is much prompter. I am thinking of the small matters. In the big matters it might be worth while making a sacrifice of loss of time, but in a small matter you would come to a much more prompt decision if you were dealing with men you could command.

Mr. F. G. Thomas: Yes, I quite appreciate that, and we are very anxious that the matter should be dealt with promptly. It might be that the solution would be that it should be a matter of agreement between the parties to dispense with assessors, but we do attach great importance from the traders' point of view to having these assessors in cases with this special knowledge. It is a matter which you will have to consider. We should wish the general procedure, whatever might be done in special cases, to be that there should be assessors sitting in cases at the hearing of matters in dispute which came before the tribunal.

Chairman: What number of permanent members do you propose to have, three?

Mr. F. G. Thomas: I do not think we have bound ourselves to three or five, either three or five, not less than three nor more than five.

Chairman: Suppose the great quantity of business in this tribunal attracted a very great many cases there would be no objection to its sitting in departments, would there?—It would not be necessary that the whole tribunal should be present on each occasion?

Mr. F. G. Thomas: That is one of the reasons why I do not bind myself to three or five. It would be desirable that there should be a traders' representative and a railway representative present.

Chairman: Upon each occasion. It may be that this tribunal will be started tentatively, and we shall have to see what is the best method of bringing it out later, it can easily be altered. I notice in the Canadian Act, to which reference has been made by the Federation of British Industries very often, that they have specially provided for it sitting in departments and even in different part of Canada. They have a Chairman and an assistant Chairman so that there may be somebody to preside over each of the two, if there were two. I follow your proposition that there should always be a representative of the railway companies and of the traders present when-

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over it is possible. It may be that interlocutory proceedings or minor matters could be disposed of in another way.

Mr. Acworth: I want to call attention to this, there surely must be a good many cases where an assessor representing a particular trade has no *raison d'être*. Take a case that might appear in the future, that the tribunal is asked to raise another £5,000,000. There is no need for putting on a representative of any particular trade. If you had to put on an extra person, he would rather have to be a general person.

Mr. F. G. Thomas: Yes, that was not the class of case I had in mind.

Chairman: I quite understand you were thinking of some particular case affecting the cotton trade, or something of that kind.

Mr. F. G. Thomas: However wide the experience of the railway and traders' representatives on the tribunal, they cannot have equal experience of all branches of trade. We are anxious that they should have the assistance when on special questions of expert advice.

Mr. Acworth: Suppose it be a question of general principle affecting all trades equally, would you leave it to this tribunal of possibly three only, because clearly you could not put on assessors with the special qualifications. How would you deal with that case?

Mr. F. G. Thomas: I should have thought that on that there would be found a panel of assessors, certain members of the panel who would, both on the railway side and on the traders' side, have special financial experience, for instance who might assist even a question.

Mr. Acworth: I am not suggesting they would not. That is a case different from the one I think you have in mind of a case affecting a special industry.

Mr. F. G. Thomas: I agree.

Mr. Acworth: How are you going to deal with that?

Mr. F. G. Thomas: That is a special case. I should not like to leave out the idea that assessors might be called in even in that case. I think probably it will be found that the difficulty so far as it existed should be got over by disposing with assessors in cases where it was agreeable to all parties affected, that in that case it would be unnecessary for the tribunal to call in the advice of assessors. On page 34 of the shorthand notes there is a passage I should like to refer to, about the tribunal: "The nomination of the permanent Members of the Tribunal in the one case, or of the panel in the other case, would presumably be in the hands of the Minister of Transport, acting after obtaining the advice of the Railway Association so far as regards the railwaymen, and of the leading associations or Chambers representing traders, so far as the traders are concerned." I take it that that has reference to the Associated Chambers of Commerce, who would be asked to advise the Minister on the appointment of traders' representatives, and, of course, the other bodies affected. I think we should be content with that procedure. Provided that the Minister had to obtain that advice, we should be content to leave it to him to appoint, after he had had the advantage of receiving the advice that was tendered to him.

Mr. Acworth: He would both appoint the panel and also select the individual for the special case. I want to know if that is what you mean, Mr. Thomas?

Chairman: You mean in each case it should go to the Minister, and he would have to consult the Chambers of Commerce as to who would be the member of the panel summoned?

Mr. Acworth: I did not understand Mr. Thomas to say that. That is not what I said.

Mr. F. G. Thomas: No, I did not mean that. I mean the actual appointment of the members of the panel would rest with him. It would be for the tribunal to decide.

Mr. Davis: Assuming there were 14, the Minister would appoint up to 14; and then the tribunal would call upon that panel from time to time for repre-

sentatives of the interests which they required to be heard.

Mr. F. G. Thomas: Yes.

Mr. Acworth: The tribunal, not the Minister?

Mr. Davis: When the panel is formed.

Mr. Acworth: There is a panel which has been nominated by the Minister, after consulting with the interests. We are agreed so far. Then a man is wanted to deal with a special case out of the panel. How is he to be procured?

Mr. F. G. Thomas: It would rest, in our view, with the tribunal to call in the members of the panel who, in their view, could give them the greatest assistance.

Mr. Acworth: You told me the Minister.

Mr. F. G. Thomas: I am sorry. What I meant was, that the Minister would constitute the panel, acting on the advice of the Traders' Associations; and the panel having been constituted, then it would be drawn upon by the tribunal to assist them in their deliberations. I think the only other point is the question of the Local Advisory Boards. To those the Chambers of Commerce attach the greatest importance. They would wish that those boards should be formally constituted. They think that there would be a great advantage in having a definite organisation always existing for the purposes of conciliation, which would bring the parties together, at an early stage; and in that way would probably very much lighten the labours of the tribunal. That agrees absolutely with what my friend Mr. Balfour Browne put to you, that those functions should be purely conciliatory. They should have no powers of enforcing their views. You pointed out, naturally if the railway companies have their representatives concurring in certain recommendations from the Advisory Boards, it would be the natural course of things that the recommendation would be accepted. We are very anxious that the utility of these boards should not be in any way impaired by the parties feeling any necessity to keep at arms length. Neither party would be prejudiced in the subsequent proceedings before the tribunal, if the agreement failed eventually, by anything that happened at the meetings of the Advisory Committee, and the parties there could feel perfectly free to put all their cards upon the table, and endeavour to see whether some reasonable and working settlement could not be arrived at. In that form we believe that these Local Advisory Committees would be of the greatest possible utility. We should like to see them formally constituted, appointed by the Minister, acting on the advice of the bodies concerned. Although we should not go so far as to say that all disputes should go before them, our feeling would be it would be the ordinary and proper course for disputes to go before them for an attempt to be made to settle the disputes in that way. It would be regarded as rather an unusual procedure, although there might be special circumstances to justify it in particular cases, to go direct to the tribunal, without having made an effort to settle the dispute before the Local Advisory Committee. I think that really covers the ground, so far as dealing with the particular point of the appointment and functions of the tribunal is concerned.

Mr. Jepson: With regard to the Local Advisory Committees, do you suggest it should be laid down what sort of disputes should go before them? You would not suggest, if a man thinks he has been over-charged something, that he should go to the Local Advisory Committee, or if he thinks the company has not paid him enough in respect of the claim he is putting forward, that he should go before the Local Advisory Committee? Lots of things would necessarily be ruled out from the Advisory Committee; and I was wondering if the Chambers of Commerce had formulated in any way the sort of things which ought to go before these Local Advisory Committees.

Mr. F. G. Thomas: Upon that, our view would be that any dispute between railway companies and the traders, which might be made the subject of an application either to the tribunal or to the Railway and Canal Commission, would be a proper matter to go before a Local Advisory Committee.

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Mr. Jepson: It would be limited to those cases where an application might reasonably be made to the tribunal, or to the Railway Commissioners.

Mr. F. G. Thomas: Yes; but I should be rather reluctant to tie the hands of local advisory committees too much. At the same time, one realises that matters like claims for damage to goods in transit, and that kind of thing, are not matters which would go before the Local Advisory Committee.

Mr. Jepson: If you leave it open, you leave such a wide field that these Local Advisory Committees would be deluged with all sorts of trivial complaints and grievances which have to be dealt with now by correspondence.

Mr. F. G. Thomas: I think as I put it before would probably be the right course: that the questions which could be made the subject of application to the tribunal or to the Railway and Canal Commissioners would be probably dealt with by the Local Advisory Committee.

Mr. Jepson: One point on the general question. I do not know whether you have considered it from this point of view. I appreciate what you say, that this tribunal, if it is set up, should be final on matters of fact and rates, and so on; and there should be no appeal to anybody else, not even to the Minister of Transport. But we do not at present know what is going to happen to the railways when the present system of control ends. Let us assume for the moment that the £50,000,000 that was put on in January was sufficient to make up the deficit in the working of the railways generally. Let us forget anything that has happened in the meantime.

Mr. F. G. Thomas: Yes.

Mr. Jepson: When the railways come to be handed back to the companies, either individually or collectively in groups, it may be that the amount that they are able to earn under the scale of rates which was put into operation on the 15th January would not be sufficient, in the case of some railway companies, to enable them to earn the same amount of net revenue as they did prior to the war. They would presumably have a claim upon the Government for compensation or subsidy, or something of that kind. Do you suggest that while the Government may be paying compensation or subsidy, the Government should be entirely in the hands of the tribunal to bring about a 10 per cent. reduction in the rates of a company which is then at the time receiving a Government subsidy without being able to veto it?

Mr. F. G. Thomas: I was regarding the tribunal as coming into existence after the temporary powers of the Minister of Transport had lapsed, under which he or the Government gives a subsidy to the railways. I was assuming that the standard of rates which had been fixed, and which would be the existing rates when the tribunal came into existence, would be the rates which had been approved by the Minister on the advice of this Committee; and that the subsequent variation in those rates which would be made by the tribunal would have to depend on the circumstances as they existed from day to day and from year to year. It would be for the tribunal to hear all the evidence as to the expenses of the railway companies on the one hand, as to what their extra expenses were; and on the other hand as to what possible economies they were able to make. I should like to say, on behalf of the Chambers of Commerce, that although we do fully associate ourselves with what the other traders say, and with what my learned friend Mr. Balfour Browne said this morning—we are quite willing that the railway companies should have proper remuneration for the services which they render—we feel that it is a vital question for both the railways and for the traders, how that money is to be raised. It is not a question here of saying to the railway companies: Well, we are going to give you a certain return upon your capital which earns a certain profit after you have paid all your expenses, whatever they may be, and however much those expenses might be reduced by more economical working. I do not think that would be the view which would commend itself to the Chambers of Commerce. We should wish to associate ourselves with the railway

companies in trying to work out a scheme of rates which will on the one hand give every inducement to the railway company to efficiently and economically work the traffic, and to the trader every inducement to consign his traffic in the most economical way for the railways, so that both parties may be expected to receive advantage from it. Perhaps it is a little bit off the point we are dealing with, but there was some discussion at the last sitting of the Committee as to the question of the classification and as to the question of the quantum of the rates, or division of the rates as between different classes—whether that was not a purely domestic matter for the traders to decide, and did not really affect the railways. I should hope, as a result of the deliberations of this Committee, for a system of rates which would make those matters vitally important to both; because it is quite possible that the rates which give sufficient revenue for their purposes to the railways at the same time might be most injuriously apportioned to the general interests of the community and to the general interests of railway transport. What one would like to try and work out is a system which would give opportunities for the best possible development of railway transport in the interests both of the traders and the railway companies.

Mr. Balfour Browne: My friend is getting away from the question of the tribunal into the larger question of rates.

Mr. Jepson: It was perhaps my fault, only I wanted to know whether you had really considered the question as to whether the decision of the tribunal should be absolutely final under such circumstances as I suggested, because one cannot shut one's eyes to the facts of to-day. Agriculture, for instance, and coal have been differentially treated as regards the advance. If the railways are to be turned back to the individual companies, some of those companies will be suffering very much, because they have not been able to earn the amount of revenue that is necessary to meet their expenses; and, presumably, the other railway companies have been paying the deficit.

Chairman: I think Mr. Jepson is trying to lead you off the point you have to answer upon. I follow what Mr. Jepson is saying: that you have suggested finality on the part of the tribunal. Mr. Jepson is saying there will be grave matters to consider as to what is to be done with the railway companies; but I think I must invite you not to answer it.

Mr. Acworth: With your permission I will ask Mr. Thomas to answer another question before he sits down. Among the matters you have proposed to reserve to the Railway and Canal Commission are questions of undue preference. Your phrase is: It should be the function of the Railway and Canal Commissioners to prevent undue preference and to determine questions arising with regard to undue preference. I understand that you propose that that shall go to the Commissioners?

Mr. F. G. Thomas: Yes.

Mr. Acworth: I think the Commission have said, on more than one occasion, that undue preference is a question of fact, and not of law. The Commission or tribunal, we will assume, fixes two rates, one of 20s. and another of 18s. Having regard to all the circumstances of the case, they consider those two rates are fair as between themselves. That is a question of fact on which they are supposed to have become experts. What is the Commission to do? Is it to say, We know more about the facts than you do, and you are wrong?

Mr. F. G. Thomas: On questions of fact, we are quite content to leave the questions of fact to be decided by the tribunal. Where there are mixed questions of law and fact, as I think there are in most cases of undue preference, it can hardly be regarded purely as a question of fact.

Mr. Acworth: Is not it a question of fact? It is agreed that it is a preference. As I understand it, it is a question of fact whether the preference is due or undue.

Mr. F. G. Thomas: Yes.

Mr. Acworth: What is there there to go to a Law Court about *qua* Law Court? If it is an appeal

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on fact, I understand what you mean; but I gather you claim it goes as a question of law. Where is the law?

Mr. F. G. Thomas: It is a legal right of the trader to have his traffic carried at rates which are not giving undue preference to his competitors. That is one of his rights. I think that the view which the Chambers of Commerce have taken is, that they wish as little as possible to deprive the trader of any legal right which he possesses to-day. It is rather from that point of view that they were disposed to think that the question of undue preference might be a question which should remain for the Commission.

Chairman: Surely there must be law in it? The preference is admitted. The question is whether it is due or undue. Is not it a question of law as to what is due? A man has a right to what is his due; and is not it a question of law as to what the man's right is?

Mr. F. G. Thomas: I should have thought so.

Chairman: I agree that an immense quantity of fact comes into it.

Mr. Martin: Is not there a very great difference in preferential rates? Take a man who from one place to another has a preferential rate. It is purely a matter of fact. But would not you have to go to a legal tribunal to decide a case such as we have had before now, Liverpool to London, Southampton to London, Bristol to London, at certain preferential rates? Would not that be a question of law more than a question of fact?

Mr. F. G. Thomas: I think it would be. There has been a large volume of doctrine, which has been the result of the deliberations of the Railway Commission, on the question of undue preference. We should like to retain those principles which have been settled there. If these principles are to be applied in the future, it would seem a natural thing that the same body which has applied them in the past should continue to apply them and interpret them in the way they have been doing hitherto. It is rather from the point of view of disturbing the existing rights of traders as little as possible that we have taken the view that the question of undue preference might continue to be referred to the Railway Commissioners.

Mr. Asworth: My difficulty is this. I do not want to argue with my colleagues, but I do not see, if you trust the tribunal to fix rates, and assume they will do it fairly, and Parliament says it is their job to fix them, why because somebody uses the blessed phrase "undue preference," therefore you are to oust their jurisdiction or appeal from it.

Mr. F. G. Thomas: I am quite alive to the fact of the danger of any division of powers between these two bodies. There must be a certain class of cases which might go to either; but the view which I have put before you is that, in the view of the Chambers of Commerce, they would prefer that the question of undue preference should continue to go to the Railway Commissioners.

Mr. Balfour Browne: May I say this is entirely contrary to the view that the Chambers of Commerce expressed to the Minister in their letter to him?

Chairman: We are not bound by pleadings here. If the Chambers of Commerce, after having heard the discussions which have taken place in this Court, see fit to recommend something different, they are fully at liberty to do it.

Mr. Balfour Browne: I thought they had considered the matter carefully before they wrote to the Minister upon the 24th March.

Chairman: Do not you know as well as I do, Mr. Balfour Browne, that a decision, after having heard the arguments given, is much more valuable than one given before hearing arguments?

Mr. Balfour Browne: They have not heard the other people yet. The railway companies have not been heard.

Mr. F. G. Thomas: At the present stage of the Inquiry it is the view which I put.

Chairman: That is the view you are instructed to put before us.

Mr. F. G. Thomas: Yes. We are not absolutely dealing with finality here; and we are trying to work out some workable scheme. We make that suggestion; but, of course, it may have to be reconsidered in the light of subsequent proceedings.

Mr. Whitehead: I do not rise to take part in the general discussion. The views of my clients on these points were so recently before the Court that I do not propose to repeat them at all. What I rise to do, in justice to Mr. Morton, is to explain a matter which my friend, Mr. Balfour Browne, said before he sat down. It is a very small point, but it is only due to Mr. Morton that I should mention it. He was being cross-examined, and it was being suggested to him that there was an inconsistency in the position he was then taking up as compared with that which was contained in the letter written some months ago, when the Iron and Steel Federation said that they were in general agreement with the Federation of British Industries. It is a very small point; but it is only fair to Mr. Morton to explain what he did say was this: At that time some of the points which have now been developed were not even in embryo; and it was very difficult for a large Federation to be always confident that it did represent all its constituents. It was nothing more than that. What has taken place in this room to-day really confirms the view he expressed. These matters do develop as the case proceeds; and associations sometimes put forward slightly different views quite properly, but men like Mr. Morton are not open to criticism for putting forward proposals which may vary as the case proceeds.

Chairman: We may take it from you that the Iron and Steel Federation desire the continuation of the Railway and Canal Commissioners, and they alone?

Mr. Whitehead: I do not want to follow it up in detail, but if I might just give you the reference, Mr. Morton summarised the position very conveniently in about 24 lines on pages 22 and 23 of the Ninth Day's proceedings. On page 22, Question 3201, in the last 12 lines of that question, he says: "But in answering your question, so long as there is a lawyer as President, and a railway man representing permanency on the railway side, and a trader (shall we say) representing permanency, having come originally from the trader side, it would not be, in my personal opinion, at any disadvantage if the railway people did add an assessor and the trader added an assessor to that tribunal for the purpose of informing the minds of the tribunal on questions of practical detail. I am naturally speaking for myself without consultation with my constituents, but that is my personal view."

Chairman: I understood that the general view taken by your clients was, that the Railway and Canal Commission should be continued?

Mr. Whitehead: Yes, in principle; but he did not object to the addition of assessors to inform the tribunal.

Chairman: That was the Railway and Canal Commission. He meant the addition of assessors to the Railway and Canal Commission; and not the setting up of any new tribunal, as I understand.

Mr. Whitehead: No. He did not desire that the assessors should take part in delivering the judgment of the Court. That appears if you refer to the answer to Question 3206, the last four lines: "But so long as the judgment were given by the Judge and the two permanent officials, it would not be such a very serious matter if there were assessors who could be referred to on questions of opinion." Then at Question 3208, he deals with the matter of conciliation Boards. I will not read what he says, but I only give you the reference. Then at Questions 3216 and 3218, he expresses the view that each member of the tribunal or the Railway Commissioners, or whatever you like to call it, should give their opinions, and there should not be one composite judgment. Those answers, I think, summarise shortly the views which I am instructed to put before you as to this tribunal.

Chairman: I am much obliged to you.

Mr. Abady: Perhaps it would be convenient if I referred now to the case for the tribunal which has

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been put forward by Sir Thomas Ratcliffe Ellis as witness for the Mining Association, and also at the same time offer one or two observations in criticism of the views on that subject which have been placed before you by those responsible for the cases of the Federation of British Industries and the Chambers of Commerce. May I first make this observation? The whole of this discussion on the question of the tribunal has, I think, proceeded out of a desire which all parties share, that there should be available both to the railway companies and the traders large and small a tribunal which shall have the characteristics of being cheap and quick. Everybody wants quick decisions, and everybody wants cheap decisions without a lot of formality. If I may take the view of the Federation of British Industries I would venture to submit to you and to the Committee that when you analyse what it is that the Federation of British Industries really proposes, there is not anything in their proposition that necessarily brings into train those two characteristics of expedition or cheapness.

Chairman: I am not at this moment asking you to argue the merits, but what we want to get now is what are the opinions and wishes of the respective classes. I am afraid if we argued the merits *ab initio* we should occupy a little more than the time we have to sit.

Mr. Abady: The views of the Mining Association were placed before you by Sir Thomas Ratcliffe Ellis, and I was trying to adduce arguments to show that the very elements which are apparently desired by all the parties are contained in the scheme that Sir Thomas Ratcliffe Ellis has put forward with this difference.

Chairman: He wants to maintain the Railway and Canal Commission, but with an alteration in procedure, so that a case might be taken before the Registrar instead of before the full tribunal when the parties agree. Is not that right?

Mr. Abady: That may be one way of putting it, but another way of putting it is this. The constitution of the tribunal, as put forward on paper by Sir Thomas Ratcliffe Ellis, would mean that where there was a matter that would require the views of a person who was skilled in the knowledge of a particular business the traffic of which was concerned, you would have the benefit or you could have the benefit of the assessors. If, on the other hand, it was desirable to have the matter discussed locally by representatives of the railway companies and representatives of the particular trade concerned, you could have a conciliation meeting before the matter went any further. I wanted rather to go through Sir Thomas Ratcliffe Ellis's scheme to show you that it does fulfil and fulfil in a very simple way what most people desire.

Chairman: I am afraid you are a little bit going beyond what we want at this moment. What we want at the moment is merely to know what is the particular form of the tribunal which is advocated without discussing afresh the reasons for it.

Mr. Abady: Then let me just explain this. The particular form would be first of all the Railway and Canal Commission selected as at present with a legal person as a chairman and two other people, one of whom would be skilled in railway work and the other of whom would have commercial qualifications; that is just as it is at present.

Mr. Jepson: Is that so?

Chairman: That is what it ought to be at present.

Mr. Abady: In theory.

Mr. Jepson: It is what is supposed to be the position under the 1888 Act.

Mr. Abady: That is one of the things which induced this comment. We really are discussing things when there really is a provision in the existing Acts, but those existing Acts are not carried out, and we do not get any forerunner by putting something which is apparently difficult but which is in fact the same. There would be a Registrar as at present. There would be a Registrar with assessors, and the exact scheme for the assessors, as you will find in Sir Thomas Ratcliffe Ellis's evidence, surely goes to the point of business efficiency. It is this. Where the Registrar

sits with two assessors—two assessors are to sit unless otherwise directed—such assessors are to be appointed by the parties: one by the complainant and the other by the defendant, no barrister or solicitor to be nominated as an assessor. I hope I am not unduly detaining you if I just argue that for the moment because what we want to show is this. If the object of having the assessor is that the tribunal, whatever it may be, is going to have the benefit of expert knowledge, surely you cannot get a shorter cut to having expert knowledge on a particular matter before the tribunal than to let both parties nominate their assessor. If it were a question of whisky traffic or coal traffic or whatever it may be, the coal people would nominate somebody who knew about coal and the railway people would nominate somebody who knew all about that particular phase of traffic.

Mr. Acworth: The Registrar would decide.

Mr. Abady: Yes, the Registrar would decide. Then the third alternative is the Commissioners. The Commissioners are to be constituted as they are at present or as they ought to be. The choice of the tribunals should rest with the parties; that is all. When the parties are not agreed, it should be for the Registrar to determine to which tribunal the dispute shall be referred. That is in the Report of the Board of Trade Railway Conference. Sir Thomas Ratcliffe Ellis suggests as an alternative to that, as at present the matters of dispute go to the Board of Trade first, and the reference to the Board of Trade is specially preserved, I ask you to note, by the Transport Act.

Chairman: Do you desire that it should still be preserved?

Mr. Abady: Yes, it should be preserved, and it should be the Board of Trade who shall advise the parties; go and try and settle it locally; go to the Registrar; go to the Registrar with assessors; or go to the Commissioners. You recollect the vital matter to the railway companies is the power to increase the rate within the maxima and justify it by being reasonable on complaint being made by a trader. You will not forget that a trader has no right to make a complaint before he has complained to the Board of Trade first, so that before the machinery which is provided by the Act of 1894 for the apparent protection of traders is put into force the trader must go to the Board of Trade at present.

Chairman: I am not very familiar with that. Is not it the practice of the Board of Trade to receive a letter from the trader and send it off to the railway company and receive the answer from the railway company and send it back to the trader and to receive a reply from the trader and send it on to the railway company and receive again a reply from the railway company and send it back to the trader?

Mr. Abady: I am afraid that the methods of Government departments are matters upon which I cannot claim to have an expert knowledge.

Chairman: Does the Board of Trade really do anything in these cases?

Mr. Abady: I do not know whether they do or not, but if they do not they ought to. My point is that there is provision in this Statute at the present time.

Chairman: The Mining Association would like to have it preserved whether it is what I have described or not.

Mr. Abady: No, the Mining Association would like to have it preserved and carried out properly.

Mr. Acworth: You are aware that the Board of Trade had up till last year a railway department?

Mr. Abady: Yes.

Mr. Acworth: Are you aware that that Department has been transferred bodily to the Ministry of Transport?

Mr. Abady: I do not know about the internal changes, but I know that certain powers which the Board of Trade have were reserved to them in one of the Orders made under the Ministry of Transport Act.

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Mr. Acworth: If it is the fact that the experts of the Board of Trade on railway subjects have been transferred from the Board of Trade to the Ministry of Transport, and the Board of Trade has not any of the people familiar with the procedure under the conciliation clause left to them, does your body still think it would be desirable to go to the Board of Trade for conciliation purposes?

Mr. Abady: The obvious source to go to under those circumstances would be the source to where the experts have been transferred. If that is the Ministry of Transport that would point to the Ministry of Transport. But the difficulty there and what led the Mining Association to suggest the Board of Trade was this. Supposing any co-ordinating scheme, or any scheme of semi-nationalisation, was created under the aegis of the Ministry of Transport, the Minister of Transport, in fact, is the executive or administrative master of the railways. He may be the man who is concerned really or his department on the one hand, and it would be hardly proper to go to one of the parties for the source of your conciliation.

Mr. Acworth: On the other hand, it would be a very difficult thing to go to the Board of Trade if they had not any machinery.

Mr. Abady: Precisely.

Mr. Acworth: Is not it desirable that that point should be cleared up?

Mr. Abady: Are not we considering at the moment setting up organisations which do not exist?

Mr. Acworth: I understood you to say you wanted the conciliation machinery under Clause 31 of the Act of 1888 retained. I think you see the difficulty of leaving it in the hands of the Board of Trade if my belief is correct that their officials have been transferred.

Mr. Abady: It does not seem to me to be insuperable, if I may say so with respect. If this Committee comes to a decision as to the particular method of dealing with this, there is no reason why the necessary persons cannot be provided in order to carry out the machinery.

Chairman: That is your proposal. If there is not the necessary personnel there they would be appointed. You would have to face Parliament and questions of economy, of course, but you say they should continue to carry out this preliminary conciliation as in the past?

Mr. Abady: Yes.

Chairman: If that is your proposition we realise what it is, and will be able to give it consideration.

Mr. Abady: That is so. There is just one other point I might mention without detaining you any further, and that is this. I think this has been overlooked. The question of unreasonable facilities, undue preference, the provision of through traffic, and so on, have all been considered here as though the only parties concerned are the respective traders on the one hand and the railway companies on the other hand. I should like to point out that the real parties concerned are as stated in the Clauses of the Act, which set out that the protection in those respects is framed not in the interests of the trader, not in the interests of the railway companies, but in the interests of the public. I submit you are not getting any nearer a form of tribunal better able to take care of the interests of the public when you are trying to build up a tribunal made up of the two parties who may be said to be more immediately interested. That is to say, the traders on the one hand and the railway companies on the other.

Mr. Jepson: What is your suggestion to improve it?

Mr. Abady: To improve what?

Chairman: You wish to leave it to the Railway and Canal Commission?

Mr. Abady: To leave it to the Railway and Canal Commissioners.

Mr. Jepson: I thought you said just now that the Acts of Parliament had been passed with the object of protecting the public, and not specifically the

traders and the railway companies. I thought we were proceeding on that basis. I want to know what is the suggestion if we do not proceed on that basis. What is the basis on which we should proceed?

Mr. Abady: The Railway and Canal Commission.

Chairman: There there is one independent man and one railway man and one trader.

Mr. Abady: Our suggestion is that the Board of Trade, on account of the conciliation machinery being preserved to it by the recent Act of Parliament, should decide to which tribunal the matter should be referred.

Sir Robert Aske: There is one matter on which I should like to say a word.

Chairman: Have the shipping trade any right to suggest to the railway companies how they should manage their business?

Sir Robert Aske: No, but there is just this one point which did seem to affect the shipping trade, and that is as to the powers of the proposed tribunal. The powers of the proposed tribunal have been discussed. The shipping trade would ask that the tribunal should have the right to deal with the question of increases and reductions of rates, and that any persons concerned should have the right to come to the tribunal when the matter of increase or reduction was being considered.

Chairman: Subject to the definition of the word "concerned," I think that clearly must be so.

Sir Robert Aske: That is the only thing I want to say.

Mr. Clements: The Mansion House Association has considered the proposals which are set out in the seventh day's proceedings, and they have also had the advantage of discussing them with the Federation of British Industries. Referring first to what I may call the chief tribunal, they are in agreement with the Federation of British Industries on the second of the alternatives suggested there, with one slight reservation, and it is this. I am referring now to what comes under the heading "Proposed functions of the new tribunal" and the subject "Railway and Canal Commissioners." Numbers 5 and 7 are these. 5 is "To settle disputes between Railway Companies." 7 is "To act as Arbitrator in any case which may be referred to it by the Board of Trade or Minister of Transport." All I desire to say with regard to those two matters is that the Association has not considered them, and, therefore, I am compelled to reserve them. In all other respects, the Association agree with and support the Federation of British Industries, and I adopt, if I may be allowed to do so, what has been said by Mr. Balfour Browne with reference to the second of those alternatives. With regard to the local tribunal, the Association does not dissent from what the Federation of British Industries advocate, but they put forward for your consideration an alternative suggestion, which is that the Board of Trade should retain the power in the conciliation clause, section 31, of the Railway and Canal Traffic Act, 1888, which has been preserved to them by, I think, an Order in Council made last September with power to sit locally. I am not sure whether or not they have that power at present under Section 31, but, if not, it is suggested that it might be given to them. The other part of the suggestion is that the Board of Agriculture might have the parties before them where the question as to rates or traffic was an agricultural matter. I believe, as a matter of fact, the Board of Agriculture now, on its own initiative, does hold what I may call local conciliatory meetings. I think it was Mr. Acworth who referred to the doubt whether the Board of Trade now have the machinery for dealing with these matters. I venture to think that they still have that machinery. It may be, as I hear, that some of the staff accustomed to deal with matters in the Railway Department have been transferred to the Ministry of Transport, but, of course, other officials remain, I imagine, or the power would not have been reserved by the Order in Council. However that may be, the Association think that

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some advantage might be derived in these conciliation proceedings by the Chairman being an official of a government department accustomed to deal with such matters. That is all I wish to place before you on behalf of the Association with reference to the tribunals, but I might perhaps be permitted to make a personal suggestion with regard to the last paragraph on page 34, which begins: "It is not to be considered that the Central Tribunal" and so on. I will not read it. The suggestion I would venture to make is that there might perhaps be a concurrent jurisdiction. Such jurisdiction, as a matter of fact, does exist to-day in some matters—I mean a jurisdiction concurrent in the Railway and Canal Commission and in the ordinary courts. In saying that, I have in mind particularly the jurisdiction of the Railway and Canal Commissioners under Section 10 of the Railway and Canal Traffic Act, which gives them power to hear disputes respecting the legality of any rate or charge, and to determine how much, if anything, the rate or charge should be. That matter was discussed in a rather recent case of *T. W. Ward & Co., Ltd., v. Midland Railway Company*. It went to the Court of Appeal, and the Court of Appeal held that the Commissioners had jurisdiction in that matter. I think there could be no question that in the ordinary case there should be jurisdiction to hear any case where a trader complained that the railway company had charged him more than they were authorised to do by their Act of Parliament. I think that is a case of concurrent jurisdiction.

Chairman: That is a pure question of law. Would you send that to your new tribunal?

Mr. Clements: There was a great deal said about the question of fact, because it turned upon a question of classification in the case I am referring to.

Chairman: The whole question was a question of pure law—was it within their powers?

Mr. Clements: That was the question which came ultimately before the Court of Appeal, but the question depended upon this. Mr. Jepson will remember the case. It is known as the Scrap Files case. The question was whether scrap files were within a certain class of classification. That was partly a question of fact and partly a question of the construction of the classification. I think, as a matter of fact, there is concurrent jurisdiction in such a matter as that. I think that is all I need trouble you with.

Mr. Head: There is one suggestion I have to make on behalf of the Live Stock Traders' Association, and it is this. In Canada the Railway Commissioners travel. If there is any trouble in connection with the railway it is not necessary to go to Ottawa, but the Railway Commissioners travel across Canada. It occurred to me it might be possible that this new Court, whether a new tribunal was set up or whether the Railway Commissioners remained, might, from time to time, so to speak, go on circuit. That might materially help people like the Live Stock Traders, who live a considerable distance from London, and considerably reduce the expense of appearing before the Commission. I do not know whether an arrangement could be made that they should regularly go on circuit or from time to time in local cases where trouble arose, and an arrangement might be made for them to go down to that place and deal with the matter. It occurred to me that might be some solution of the difficulty.

Mr. Clements: Might I be permitted to add a word with regard to the proceedings of the Board of Trade under the conciliation clause? I heard what you said as to what happened when a complaint is made. I am not without some experience of the working of that clause. Perhaps you would let me say that after a certain amount of correspondence has passed it is customary for the Board of Trade to call the parties before them to have a discussion. In the earlier days of the existence of that clause a great many settlements were arrived at, but it would be obvious to you that the utility of the clause must

very largely depend upon the personality of the official who carries it out.

Chairman: Your experience is most valuable. But to what extent is that conciliation useful now?

Mr. Clements: I am rather out of touch with that point. I remember some few years ago, 8 or 9 years ago, the Board of Trade reported that something like one-third of the cases submitted to them had been settled more or less to the satisfaction of the complainants.

Chairman: What sort of number of cases was submitted to them?

Mr. Clements: I am afraid I am not able to remember the figure. I am rather making a shot at it, but I think it was something like 900 or 1,000 cases in the course of three years, or something like that. I hope you will not take that statement as being absolutely accurate.

Mr. Bruce Thomas: That was given by Sir Thomas Ratcliffe Ellis, and I think it appears in Mr. Russell Rea's report of the Committee that sat in 1911. The figures were 15,777 complaints between 1899 and 1907, and in 1,000 instances a settlement more or less to the satisfaction of the complainants had been obtained, or the explanations of the companies had been accepted.

Mr. Martin: Was not it the fact that some traders took cases under that conciliation clause before the Board of Trade, and when they got their case discussed and got an opinion favourable to the traders, the railway companies refused to go on with that conciliation, because they said they preferred to go to the Railway Commission? Do you remember that?

Mr. Clements: I think that may have happened in some cases, but I do not think it was the general practice. I do not think it can be said it was the general practice of the Department and the railway companies.

Mr. Acworth: Has the presiding officer, when they sat at the Board of Trade of late years, usually expressed any opinion of the merits of the case?

Mr. Clements: I think not.

Mr. Acworth: In the earlier days, I think he did. He used to say, "I think you ought to do so and so."

Mr. Clements: I believe so.

Mr. Acworth: That is my recollection of what happened, but at a later date he said, "I must leave it at that; you each know what the other thinks, and I must leave it at that."

Mr. Clements: That is entirely in accordance with my recollection of the procedure. The reason of the change is a somewhat delicate matter to refer to.

Mr. Acworth: I am not discussing who was right; but there was that change of policy.

Mr. Clements: It certainly was so in the first instance. I think the very excellent official who was the head there died rather suddenly, and afterwards it was not so well done. I think I had better leave it at that.

Mr. F. D. Marton: With regard to the London Central Markets Association, my instructions do not contain any statement of their views as to the tribunal, so I should like to leave it open, if I may, and ask them to embody any views that they wish to put forward in their evidence.

Chairman: There are no more views on the traders' side. We will ask what the railway companies think about it.

Mr. Bruce Thomas: We have considered these matters, and it is our desire that we should deal with them through a witness. That witness, if it was convenient to the Court, will be available directly after lunch.

Chairman: This is very unsatisfactory. Here we are giving a very long time to the consideration of these matters, and we particularly asked that the railway companies should be ready with an answer to-day.

Mr. Bruce Thomas: It was understood on our side—we are sorry if it causes the Committee any inconvenience—that the views of the traders would most

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certainly not be completed by lunch time, and we had arranged that our witness should be here ready to deal with the matter at the sitting of the Court after lunch. Sir John Simon hopes to be here at that time also; in fact, I think he will be here a little earlier. If that will meet the convenience of the Committee, we should be obliged if we can then deal with the matter.

Mr. Balfour Browne: Might I ask my friend, will this witness, who is coming after lunch, practically cover the whole ground, or are you going to call a large number of witnesses?

Mr. Bruce Thomas: It was our desire to deal with this question and with other questions. We wanted to put forward our views more or less as a whole, and deal with each item.

(Adjourned for a short time.)

Sir John Simon: Sir, I am sorry I was not here when the traders had finished at one o'clock, but I know the matters with which you have been dealing, some by anticipation, and some because my friends have been good enough to help me. If you wish I will indicate in three or four dogmatic sentences what I understand to be the railway view upon the tribunal.

Chairman: I think that will be the most convenient course.

Sir John Simon: Subject to that I suggest this to the Committee if they think it convenient. We have done our utmost to be in a position to give the authoritative railway view upon a number of questions which have been discussed before the Committee during the recent sittings. I should like, if you thought it convenient, and the traders thought it convenient, to present that in the most authoritative form I can by calling Sir Alexander Buttworth and dealing in compartments with the questions raised one after the other.

Chairman: I think it will be convenient to deal with compartments in that way, and to deal with the question of the tribunal first.

Sir John Simon: As regards that it will be as well if I state three or four points as they present themselves to us. First of all, as number one, the railway companies are very strongly of opinion that the Railway and Canal Commission should be preserved, that it should not be swept away. There is a difference of opinion among the traders. In this matter we find ourselves inclined to the view of Sir Ratcliffe Ellis and Mr. Morton rather than the view of some others of the witnesses. We think the Railway and Canal Commission should be undoubtedly preserved as a Court dealing with this class of matter. I would make this one qualification or comment on it, still on the first point, the railway companies thoroughly sympathise and are prepared to support the claim that the Railway and Canal Commission should be constituted in more exact accordance with the prescription of the Act of Parliament which set it up. That is a perfectly natural request for the traders to make, and we agree. We are strongly of opinion it ought not to be swept away and ought to exist, and to perform at any rate a very large part of the functions it performs now. Point number two; we do not think that the advantage of the so-called business tribunal over the Railway and Canal Commission will necessarily be as great as some of the witnesses think, but we are perfectly willing to co-operate and accept the view that there should be a business tribunal. I want to deal with both its constitution and powers. As regards its constitution, which is point number three, I do not know that we differ here very much from the traders. We think it should be presided over by a lawyer of distinction and experience, and, of course, preferably one who is familiar with this class of subject matter. We think he should have as his colleagues, I am not talking about any panel now, either one or more, probably one is enough, representative who may be supposed to be familiar with the railway point of view, and one who is familiar with the traders' point of view. Whether in addition to that there

Chairman: I ought to have been told, when I made these suggestions as to the methods of dealing with the various points, if the railway company were not going to fall in with the suggestion and if we were not going to know the answers. I think they ought to have told me that, and I should not have wasted this morning asking the traders to give their views.

Mr. Bruce Thomas: We propose to give our views upon this question—I have no doubt it will be done straight away after lunch—and not defer it till the other matters are being dealt with. I have no doubt that can be done. This matter can be put in the forefront and dealt with at once.

should be an additional panel to which recourse should be had from time to time does not appear to the railway companies to be very important, but we are inclined to the view that the members of the panel, if they are invited to assist in a particular case, should not be part of the tribunal, but should be advisers of the regularly constituted body. That is as to constitution. Then as a function, number four, I think I am expressing the railway companies' view when I say we do not find that the provisions in the present law, requiring complaints to be made to the Board of Trade and the Board of Trade to communicate to the railway company and all the rest, have very often had as fruitful a result as might be expected. It has very often been an extremely formal step. It is really more an opportunity for the ingenious pleader who appears for the railway company to put as a paragraph in his answer in the Railway and Canal Commission Court, the trader has never made this complaint, and therefore there is an objection to the jurisdiction. Therefore while we are all for conciliation and meetings between the railway company and traders, we are doubtful whether that formal step through the Board of Trade does much good. As regards this business tribunal it seems to me, since a tribunal of much the same character is now engaged in advising the Minister as to what should be the scales and tariffs of charges, that this is a very proper tribunal to ascertain and decide the question, whenever that question has to be decided by a tribunal, what in the circumstances is the reasonable rate. Your Committee no doubt will in many cases hit the ball's eye, but I suppose we are entitled to assume that in some cases you may not have got at the right figure, and circumstances may change which will require the figure to be altered. I am not on the question of what is the procedure to alter it, but whenever a tribunal is needed to judge and decide whether a new charge is a reasonable charge, we think this business tribunal we have indicated would be the natural tribunal to decide that matter. There is an important qualification which I ought to state here. I had better read the paragraph which is put before me. I have had it before me several times and I do not wish to omit it. If questions about reasonableness of rates are to be decided by a business tribunal, as we are quite prepared to agree that they should, they should be only questions about individual rates and not questions involving general principles or all-round increases, and some one, it may be the Minister of Transport, it might be conceivably the Railway and Canal Commission themselves, should have the power to say whether a dispute involved a question of principle, governing a very large matter, in which case either the decision of the tribunal should be subject to appeal to the Railway and Canal Commission, or else we think the Railway and Canal Commission should deal with the matter of principle in the first instance. Dealing with the ordinary case of an individual rate, or a series of individual rates which on one side or the other have to be reviewed for the purpose of arriving at what is on reflection a proper reasonable total charge, that

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seems to be the proper function of this business tribunal, and I expect they will be pretty busy.

Chairman: Suppose fresh money is required for the railways by reason of increase in expenses over which they have no control, to what body would you send that? An extra five millions is required and the question is, how is it to be raised?

Sir John Simon: It may in a sense be said to be the class of question this Committee is considering now.

Chairman: It is undoubtedly, but in future supposing that an Act of Parliament has been introduced and has fixed rates for the year 1921, and they are not to be changed without some procedure. There is a chance in circumstances and the rates are either considered to be too high or too low in the existing circumstances in 1925; to what tribunal would you go to say the rate should be put down because they are producing more money than is required, or put up because they are not producing sufficient?

Sir John Simon: That is a most practical point. I am not quite sure whether in my instructions it is covered. I cannot help saying for my own part that this Committee is engaged on that class of question now, and therefore the kind of tribunal we are speaking of might very naturally be regarded as the appropriate one. Would you mind if I got some specific instruction about it, because it is a very important point? The next thing I want to make clear is this. We should not be in favour of this business tribunal taking the place of the Railway and Canal Commission for deciding such questions as undue preference, or these other complicated and very largely elaborate questions which sometimes come before the Commission. My own idea, I am communicating this to those instructing me at the moment as much as stating it on their behalf, is that the business tribunal besides having this great task of seeing that rates are judged to be reasonable, would also be a very proper tribunal to decide questions of classification, both questions as to where a new article is to be put in the classification—

Mr. Davies: Excuse me, Sir John, what is the elaborate question that you would exclude from the business tribunal?

Sir John Simon: I think one large question would be questions of undue preference. We think that the Railway and Canal Commission should deal with that. I put it in a different way. Our own view is that the function of this business tribunal should be to be available at the shortest notice to deal with questions as to whether a rate is reasonable, and to put upon them a great number of other tasks is only too likely to mean that one will not get a rapid decision on the question of the reasonableness of the rate which is of the essence of the rate.

Mr. Davies: I do not quite follow you.

Sir John Simon: If the Chairman is engaged, it may be a complicated inquiry about undue preference, his hands are occupied, whereas the essence of the arrangement ought to be that this tribunal is constantly ready to deal with questions of reasonableness of rate. There is another question which is important, but does not happen so often which we think, at least I think, and I hope my friends agree, would properly be entrusted to the business tribunal. It is one at present in a very anomalous position indeed: it is the question of the classification when in doubt of a particular article. If it is a new article, as the thing stands at present, the Board of Trade has a discretion to put it in a classification, not, we venture to think, a necessary function of the Board of Trade, but a most proper one for a business tribunal which would be able to get all the information. Another thing is this: at present disputes arise, in the last few years they have arisen several times, as to whether particular consignments are properly described as being one article or another. It is a question of identity. For example, there was a dispute as to whether radiators such as you put into a house to warm it in the winter were to be properly described as

bundles of pipes. There was a dispute as to whether a metal reservoir which would contain something was rightly to be regarded as a pipe which happened to be closed at both ends or a tube. There was a question as to whether second-hand propellers out of an old ship were properly to be regarded as scrap steel. At present those things are litigated before the Railway and Canal Commission, and it is really using the Railway and Canal Commission, as it seems to me, for a purpose that they were not intended for. That does not seem to be what the Railway and Canal Commission is for. This business tribunal, dealing with questions of that sort of business, can decide rapidly. I have my doubts whether the Railway and Canal Commission ever had jurisdiction to decide such questions, but it seems to be accepted that they had. These would be proper matters for the business tribunal, and I think they would have plenty to do. We should like to reserve the question how far there is any appeal from the business tribunal to the Railway Commission. My own view is that we ought to trust the business tribunal to settle these questions of reasonable rates finally. I hope that will be the view which my friends will take with me. Suppose it really involved questions of law, a thing which I do not think is very easy to imagine, but which I suppose may conceivably arise, as, for example, what are the considerations which you are entitled to take into account to determine whether a rate is reasonable. I imagine that there would be no objection that some method should be arranged for testing that question of law, but the question as to what is in the circumstances a reasonable rate is pre-eminently a question of business fact, always remembering that the total product of the rates must bear a definite relation to the expenses of the enterprise. Those indicate some definite answers of fact we should seek to give. Sir Alexander Butterworth has provided himself with a deal of material about it, and we should give you, and I think it would be useful to give you, at some stage a little information as to how the Railway and Canal Commission really works, more particularly under the Act of 1894 and the amending Act of 1913. The Act of 1913 was intended to be a simplification and a short cut, giving the railway companies an easier road for justifying an increase than the Act of 1894 provided. In point of fact it has not turned out so, at least if one may measure it by time, because the case that has taken longest in the Railway and Canal Commission in the way of justification for an increase happens to be a case under the Act of 1913. At any rate it is a very elaborate shorthand note.

Mr. Balfour Browne: That was because of the War.

Sir John Simon: I meant the number of days' shorthand notes, not the time it started till it was finished. I had not the honour of conducting the litigation, but it was necessarily litigation which was bound to take long. I have tried to answer you.

Chairman: I am very much obliged to you, that does give us a clear idea. Do you think the most convenient course now would be to call Sir Alexander Butterworth?

Sir John Simon: I think I should propose, if you agreed to take definite compartments, statutory maxima, tariff scales, differentiation in charges, and try to collect together the view he is able to express having been in constant consultation with railway people.

Chairman: Do you mean take those four or five points in examining him now or deal with the tribunal first and recall him upon each of the others.

Sir John Simon: I am bound to say the work we have been doing by way of preparation was not primarily addressed to the tribunal. I have some material but I have much more precise material on some of the other points. I am rather disposed to think, unless I am taking anybody off the track, perhaps the traders will tell me their wishes. I think they might wish to know at once what is the railway view of statutory maxima.

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Mr. Balfour Browne: Certainly.

Sir John Simon: On tariff scales and differentiation.

Mr. Balfour Browne: I think that would be most convenient. For example, as to what my friend has just said with regard to the classification, I entirely concur, that ought to go to the tribunal whatever it is, because we differ with regard to the Railway and Canal Commission.

Chairman: One matter I hope you will keep back.

Mr. Balfour Browne: May I say under these circumstances it is quite unnecessary asking your witness about that point because we are absolutely agreed, I think everybody is agreed.

Sir John Simon: I thought you would say so.

Chairman: One matter I hope you will keep back, that is the question of what is the standard in money which would be applied in fixing rates. I think that we probably would be wise to wait till we hear the Government pronouncement. If the Government pronouncement does not come we shall have to go on, but I presume it will come before very long and probably it will be better if we know the Government pronouncement before we discuss it.

Sir John Simon: I am very much obliged to you for having mentioned that, because it has been one of our pre-occupations. We are prepared at the proper time to give the Committee such assistance as we can about that, and in view of the fact that you put forward, not as your view but for discussion and consideration, a formula some time back, we have been working at it very carefully, but I should like to see if I follow you rightly. The question, what is the fair remuneration for the railways to get or the lump sum to be produced, I understand, is not to be dealt with at this moment.

Chairman: I think it will be more convenient not to deal with it, because when we have heard the Government pronouncement we may stand in a different position, partly on the question whether it is to be a unified railway, or groups from existing railways, and partly they may or may not have something to say upon what provision should be made for

putting the railway companies in a satisfactory financial position.

Sir John Simon: Then it will be understood in calling Sir Alexander Butterworth's opinion upon the matter, the principle upon which rates should be other points.

Chairman: Yes.

Mr. Balfour Browne: I should like to have the benefit of Sir Alexander Butterworth's opinion upon the matter, the principle upon which rates should be founded.

Chairman: I think we might have the principle.

Mr. Balfour Browne: I may cross-examine him as to that.

Chairman: The principle upon which rates were founded is one thing, the amount of money to be found and how to divide it between the railways is another. That is the point I wanted to keep back.

Sir John Simon: I do not want any misunderstanding. I do not in the least shrink from this branch of the inquiry, indeed we have been prepared to give such help as we can, but I want it to be clear before I begin. If my friend is going to cross-examine on whether 5 or 10 per cent. is the proper railway return and all that, then I want rather to consider how I am going to present my case.

Chairman: I rather wanted to bar that.

Mr. Balfour Browne: I would not think of cross-examining as to whether 5 or 10 per cent. was the right term, but I think I have a right to cross-examine as to the principles upon which a percentage should be found.

Sir John Simon: I will undertake that, my friend, if we might deal with it in a compartment—it is most important.

Mr. Balfour Browne: It is.

Sir John Simon: I undertake he shall have, as far as I am concerned, full opportunity of cross-examining, but I hope we shall for the present confine ourselves to those features that have been discussed by the trade witnesses. I am not seeking to shut my friend's mouth.

Mr. Balfour Browne: We will see how it turns out.

Sir ALEXANDER KAYE BUTTERWORTH, called.

Examined by Sir JOHN SIMON.

3378. You are general manager of the North-Eastern Railway Company. In coming here are you coming because you have been asked to give evidence on behalf of English and Scottish railway companies generally, so far as they are included in the Railway Companies Association?—Yes, so far as the points are common to all companies, which, of course, covers all the general ground.

3379. I am proposing, if Mr. Gore Browne agrees, to ask you first about statutory maxima. Before I do so you have prepared, and I would just like to read, it is only three paragraphs, what is your understanding of the position as it stands at present with which you are asked to deal?—Why I am here and what I am here about.

3380. Yes.—I put that to clear my own mind on the subject.

3381. You drew this up some days ago, and I have been given a copy. It does state in a short form the position, and I would like to read it without comment.

"The rates at present in force are the result of direct action by the Minister of Transport, taken on the advice of the Advisory Committee after they had given to the matter such brief consideration as was possible in the time, the avowed object of the Minister being within the shortest practicable time to restore the balance between receipts and expenditure upon the railways as a whole, and so relieve the burden which was then being borne by the taxpayer. It is understood that a promise was made to the traders at that time that the rates so brought

into force might be regarded as merely temporary, and that at the earliest practicable date they would be superseded by rates based as far as possible on scientific principles, and meeting in the best manner attainable the needs of the railways and the requirements of trade. It is almost inevitable that the rates in the station rate books, which have grown up gradually over a long period of time should contain anomalies, and the Minister's rates, being little more than wholesale advances upon the rate-book rates, necessarily reproduce, and to some extent increase such anomalies, and if they remained in force indefinitely, would perpetuate them. Further, it is by no means certain that the Minister's rates will achieve the object he had in view, viz., to restore the balance between receipts and expenses." That was written some little time ago. I fancy you would put it more strongly now?—One could put it more strongly.

3382. "And it therefore becomes necessary from his point of view, and for his own purposes, to revise the rates at present in force as regards both (1) their aggregate amount and (2) their distribution between different industries and different classes of traffic. But any new rates brought into force by the Minister would cease to operate after February, 1923." That is the two years' control plus 18 months?—Yes.

3383. "And, therefore, it is necessary to make provision for rates on and after that date. This involves two considerations. In the first place, it is clear that, unless prices and costs of all kinds, including wages, fall considerably before that date in a way that nobody anticipates, the future rates must be largely

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in excess of the existing statutory maxima; therefore, some Act of Parliament will be necessary before that date. In the second place, it is necessary to provide for future variations of any rates that may remain in force, or be brought into force, in February, 1923, in order to meet alterations of circumstances in the future. Therefore it is proposed in the first place to fix, or get fixed, as early as may be, a complete set of actual rates which, from a date to be determined will take the place of those at present in force (viz., the rates in the station rate-books as varied by the Minister's Order of December 23); in the second place, to provide for subsequent variations of the rates so fixed, and lastly, in view of the fact that any substantial alteration of the pre-war rates, if it is to become or remain effective after February, 1925, will require an Act of Parliament, to take advantage of the opportunity so afforded to effect any alterations in railway law or practice which seems desirable and which require statutory authority.*

3384. You drafted that, I know it was done with great care, to try and define accurately the ground which one had to occupy and the reason for devoting one's mind to it?—Yes, that is so. When we had the letter from the Ministry the enquiry seemed to be a little bit in the air. One did not quite know the scope of the enquiry. There was nothing to show. One could not have drafted that the day before the enquiry, but watching what was said, the questions put to traders and what was said from the Chair here, one gradually got a clear idea, much clearer I am sure than some of the traders had when the enquiry had begun, of what we were really after as regards maxima and actuals. That is how I understand it to be, one would like to know if one is right or wrong.

3385. You are here and it is evidently carefully put together. Taking it from that point of view, first of all, let us deal with the question of statutory maxima. I want to put it shortly and get you to answer as dogmatically as our common constituents will allow. First of all I will put a question now and we must go back. Are you, representing the railway companies, in favour of the preservation of statutory maxima as distinguished from the fixing of reasonable rates below the maxima?—No, I wish to present the opposite view, the anti-maxima view.

3386. First of all, do you find that there seems to be a good deal of confusion in connection with this term "maxima"?—That is so, that is what struck one at the beginning of the enquiry. It was quite clear that we were all using the term in a variety of senses, I would say in at least three senses. We have been accustomed rather in the railway world to talk of the maximum rates as meaning the statutory maxima, the figures in the Rates and Charges Act, 1891. It is quite clear that many of the witnesses talking about a maximum had in their mind a rate that could not be altered except by the railway company at its own sweet will, which is undoubtedly a maximum rate in a very real sense.

3387. Class rates as opposed to exceptional rates?—A class rate might be actual or exceptional. A rate a railway company cannot increase without getting somebody's leave is a maximum rate in a very real sense. That was pointed out by Mr. Balfour Browne himself.

3388. Mr. Gore Browne?—Mr. Gore Browne might have said the same thing. I had in mind something Mr. Balfour Browne said with reference to something that took place in 1892 and afterwards. After the Shaw Lefevre Committee and the Act of 1894 the actual rates in force on the 31st December, 1892, at a fixed date, became the maxima. That was Mr. Balfour Browne's phrase and it is perfectly correct.

3389. To keep to our point, may I put this? If I follow you rightly the real question at issue always must be what is the body which is going to determine whether a higher rate should be authorised or not?—Exactly. I think that is really the only question.

3390. I thought you were referring to Mr. Gore Browne because you have noticed in the shorthand note the Chairman put to a witness, or to one of my friends the other day, that up to a certain point the traders agreed that it would be for the Committee or some business tribunal to judge whether the rate should be increased. Naturally some of the traders think when you have reached a certain point of elevation it should cease to be in the power of the Committee or business tribunal to judge that and you must go to a parliamentary tribunal to get any further. Do you see any reason in the light of your experience why we should change from one tribunal to the other merely because you reach a particular limit?—No, I do not. I think the traders get all the protection, I was going to say they are entitled to. I would go further and say all the protection they can really need if they get a tribunal satisfactory to themselves and satisfactory to us, too. That is to say, whose leave has to be got, as it were, before you can increase the rate for the time being. If you combine the two limitations as it were, the limit that is put upon you by the tribunal, and then above that the limit put upon you by Parliament, the second limit merely becomes a limitation on the power of the tribunal, that is all. You are not limiting railway companies; you are in a way, but you are only placing a limit to the authority you give to the tribunal. The railway companies see no reason for that and see nothing to be gained by it. There is this disadvantage, one would have thought that it would have appealed to the traders, that you are introducing an additional investigation. It must be so, at least I think so.

3391. Mr. Davis: What tribunal did you refer to then?—I was referring to any tribunal that Parliament might set up to whom railway companies had to go for authority to increase a rate, or to whom a trader would take a complaint if a rate was increased. I did not intend to touch on the question what that tribunal should be. I was assuming that there would be some tribunal. My point was, if you have the statutory maximum imposed as well as a controlling tribunal, the statutory maximum becomes a limitation upon that tribunal, and that is the point we do not see —

3392. Whatever it is?—Yes, whatever it is. Then I was going to say it seems to me it has this disadvantage that the procedure would involve an extra investigation with all the concomitant expense, because I do not understand that the traders, in fact, one knows the contrary as regards the bulk of them, would be content if statutory maxima were fixed. The railways companies should have freedom to charge within that maximum. That one would have thought was the natural procedure; if you have maximum rates, that means rates you must not exceed, but up to which you can go. I do not understand traders are in favour of that. Therefore you would get this result, you would get actual or working rates fixed by somebody, say, this Committee, some tribunal or other, but then you must get a second investigation you must get somebody to fix the statutory maxima that are to tie the hands of this tribunal. That is an extra investigation which might take a long time and cost a lot of money, and having regard to the fact so much is said about speed and economy, it is a suggestion one would rather have looked to come from our side of the table than the other.

3393. Sir John Simon: First of all, do you see yourself any principle by which one could ascertain how much above what is now the reasonable rate, this statutory maximum ought to be?—No, when you come down to practical talk, I would respectfully submit, I was going to say I would assert, that really rules the suggestion out, because things are so abnormal to-day.

3394. Do not let us run on about it too much. I think it is plain to the Committee. There has been a suggestion by one of the traders that the statutory maxima ought to be 15 per cent. above what are

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now fixed as the reasonable current charges. Is there any reason why it should be 15 any more than any other figure that you know of?—I very much doubt whether that 15 was in the witness's proof. I should think he had to say something, and he said 15. He might just as well have said 45. In these days it would be quite impossible to fix a margin that would give the legitimate elasticity and legitimate freedom of action to the railway companies, and at the same time would be a useful protection to the trader. It passes what Mr. Gladstone used to call the wit of man, and you would want a super-man at any rate.

3395. There is another question I want to put specifically. It came from a very distinguished friend of ours early in the inquiry. What is your view as to the suggestion that the existence of statutory maxima has a check on extravagance on the part of the railway company?—I do not think it would prove to be so. I quite agree that if railway rates are to be fixed on the basis that is suggested by us, and I understand is really common ground to all who are taking part in this inquiry, there must be a check on extravagance. You cannot simply increase railway rates because a company is spending a lot of money. That really goes without saying, but I do not see how the fixing of a maximum is going to effect that, because there must be *ex hypothesi* this margin between the actual and the maximum. If a company is extravagant it will exhaust that margin. You can say when the margin is exhausted you are like a bankrupt who has come to the end of his purse and he has no more. Of course, if you have as had a state as that, I do not know what is going to help you. I do not see how it would help in the direction suggested.

3396. As a matter of fact, you are speaking of a very long railway experience. Do you think that the policy of railway companies, their effort to be thrifty, has been effected to the existence of these theoretical maxima?—No. I think the best way to make a railway company, like any other trader—after all, we are all human—economical, is to give them the result of their thrift. If they are economical the shareholders get more into their pockets, and that is the best inducement to bring about economy.

3397. I think there are four possible alternative courses. You have formulated them and considered them, and you will indicate which you think is the right one.

3398. Mr. Acworth: Before you leave maxima, there was another suggestion made that it was impossible to fix maxima to-day, but there might be a provision in the Act that they should be fixed, say, five years hence?—We have not passed the maxima; we are in the middle of it.

Sir John Simon: No, but I am glad to deal with it at once.—I wish you would keep to my proof.

3399. It is quite true some witness did say he recognised the difficulty of fixing statutory maxima now, but if only everything was postponed he hoped in so many years' time, while reasonable rates would be one thing, statutory maxima above them would be arrived at with more assurance. Do you see any reason for thinking so?—I think one must admit in normal times it would be easier to fix a maximum than in abnormal times, and I do not think anyone arguing against maxima could say no to that. I think my answer to that would be, I do not see the object of the double limitation. I think that is what one really comes back to. I really think, if you view the thing from a common-sense point of view, the issue, apart from the abnormality—I agree I did so, and I think, if you are speaking of the present day, abnormality rules out the maxima possibility—I agree, if you get back to normality, that argument has gone; but, broadly speaking, the issue is, which, in the interest of the railway companies and the traders, primarily the traders, is the best system, a system of maxima laid down by Parliament, after careful investigation, when you have got to normal times, with freedom to have the charge within

them, on ordinary commercial lines? That is an understood procedure, and has a good deal to say for it. Or do you think a different system, do not bother about maxima, do as you do in America and Canada, and, in fact, as far as I know, most parts of the world, allow rates to go up and down according to the time and requirements of the day, but allow control by some outside body? Broadly, the issue is, which do you think the better of those two systems? We have thought the thing a good deal over, and we have come to the conclusion that the second is the better, but, in the process of coming to that, one thought, is it worth while bothering very much because the other is impossible in these days? That is really how I come to it.

3400. Let me put the four alternative courses. You have indicated two. Perhaps I may for convenience, and for getting it on the note, just state them. First of all, it would be possible for Parliament to enact new statutory maxima on the recommendation of this Committee, and then to leave the companies to fix their actual rates within those maxima in their discretion?—That is what was done in 1891, and was in operation for about one and a half years.

3401. And was found not to satisfy everybody and was altered in 1894?—I have a great deal to say about that if you want it, but keep off that.

3402. That is one. Now take a second possible way of doing it. Parliament might enact new statutory maxima. It might also enact actual working rates lower than those maxima or prescribe machinery for fixing the actual working rates?—That is what I understood many of the traders are asking for to-day.

3403. You have given us your reasons against it?—Yes.

3404. Or, of course, take Mr. Martin's view. Parliament might suspend or abolish the existing maxima and allow the Minister's rates with proportional additions to remain in force with a view to dealing with the whole question at a later date?—I quite appreciate.

3405. Then, fourthly, this is your proposal: Parliament might abolish statutory maxima and concurrently prescribe standard rates, and then lay down a procedure by which future variations of those standard rates might be secured and exceptional rates might be reviewed?—That is what we advocate.

3406. That seems to be the four alternatives. You have indicated your reasons for thinking the fourth and last is the best course?—Yes, of course as regards the third, one would say it would be unfortunate if that is the best which could be done. I think we should have a try at getting something more definite and something that has a greater element of finality than is indicated by Mr. Martin.

3407. There is a concrete matter of fact I would like you to inform the Committee about here. I am putting something which you and I had a talk about last night, so that I know it is in your mind. One of the objects which we all have in mind is as far as possible to get simplification and due proportion between one charge and another. Has it been your experience in the past that where a railway company has taken the burden of justifying an increased rate and has justified a general addition, whatever it may be, say, 4 per cent.—?—Where a company has?

3408. Yes, that you lose due proportion because you have certain cases in which, though you have justified the addition, there comes this statutory maximum line in the way and you cannot go above it?—That is so; you could not, as I think I pointed out last night at rather a late hour, or this morning, I am not sure which it was, have a better illustration than the recent 4 per cent. increase, because there the railway companies were up against that very difficulty. So many of the class rates, in fact, you may say the class rates generally, are at or close to the minimum. That has been so ever since 1891. You could only raise them to an insignificant extent; you had to rule them out against any general raising.

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Therefore you were left to get your increase out of the exceptional rates. The result of that was, you may say it did not make much difference to the companies, but the result was a number of traders thought themselves badly treated. They said after all wages are increased, a burden has to be placed on the railway industry, at least passed on from the railway industry to the traders, and it ought to be passed on in some rateable and equitable way and not entirely put on the peaks and those who are down in the valleys instead of at the peaks, because the peaks have reached the ceiling already. It is exactly what you say.

3409. It comes to this, if it is desired to observe and apply due proportion as between one charge and another the existence of a level statutory maximum, if it operates at all, is likely to prevent that due proportion really being preserved and that is its only operation?—I think that is absolutely accurately stated.

3410. Experience in the Railway and Canal Commission Court would bear that out. You have often had to leave out certain rates because if you added certain amounts you would go beyond the limit?—I do not know whether there was, but very probably so. There obviously might be another point as well. Obviously if you have a certain sum to raise, the more you spread it the lower it might be. It is quite possible the 4 per cent. did not recoup the majority of companies, but it is quite possible if we spread that increase over everybody we might have made it 3 per cent., or something less than 4 per cent. It has that disadvantage in addition.

3411. Now, I think we have indicated, as far as this evidence is concerned, not only your view, but some of the reasons, at any rate sufficient to enable my friend to appreciate the points. I have dealt with it in a single compartment in that way. Is there anything else on that head of statutory maxima? You have made your view entirely plain, I think. Is there anything you ought to add? If not, we will pass on at once to one or two other matters.—No, the only point was in connection with a slight point Mr. Balfour Browne made as regards Canada, but the Canadian Act has been put in since, and I think it speaks for itself. I do not think Mr. Balfour Browne was correct in speaking of the Canadian practice as justifying the maximum theory as against the other, in the sense we are talking of it, because in Canada you have not your statutory maxima and your tribunal maxima as well. I do not think he can fairly quote it as an illustration of the double limitation theory we have been discussing.

3412. If I follow rightly, in Canada what you call the maximum rate is like the British class rate; it is the highest rate charged?—Yes, and the highest you may charge till you get somebody else's leave, but it is not Parliament's leave.

3413. If you think there is good ground for changing that and charging a higher rate you are liable to be challenged and the tribunal will have to decide.—It is the Board of Railway Commissioners, I think, in Canada.

3414. I think we may pass on. There are one or two very important matters you can deal with in a sentence or two. Let me take the Act of 1894 for a moment. There is a special point on that. In some document I have is page 8. The tribunal is familiar with the Act of 1894, and with its provision that the railway company cannot justify the new charge it wants to make by showing that the new increase charged as a whole is reasonable, but it has to address itself to the extremely narrow and technical test, whether or not the increase is reasonable and can be shown to be so by reference to different elements of expense.—I do not think that is a point between us and the traders. I gather Mr. Balfour Browne takes the same view as we do. It cuts both ways. Sometimes it would have been easier to justify the increase than the rate. I think it is almost common ground between us that if you have an inquiry into the reasonableness of the action of the railway company

in increasing a rate, the proper investigation, both in the interest of the trader and in the interest of the railway company, is that you should consider, is the new rate, the increased rate, a reasonable one in the circumstances? That is to say, as you put it, that you should not be limited, neither should the trader, to simply criticising that.

3415. I rather think we are at one about that?—I think so.

3416. Incidentally, apart from the merits of the other view, has experience shown that this very narrow and technical test occupies an immense amount of time and a great deal of money to apply?—That is so, and I do not think it ends there. I am not enough of a lawyer to know whether it arises from the wording of the Act, or from the view of the tribunal, but there is no doubt the result has been that the enquiries have been entirely limited, in fact, the parties, I think, are restricted in practice to a consideration of that one element, increased cost of the carriage of that particular commodity between two periods. It is common ground really, I believe, to everybody in this room, that cost is only one of the elements that go to constitute the fixing of the rate. It seems unreasonable, when you are at this particular enquiry, that everything should be shut out except this one consideration. Whether that arises from the wording of the Act or not, it has been the result, and it is one of the reasons which make us want to get rid of the Act. Of course, something will have to take its place, but we think strongly that the matter should go.

3417. Whether the matter has to be decided by a tribunal, before the rate is altered, whatever the tribunal may be, it is common ground the question ought to be always, what is the reasonable rate that ought to be charged?

Mr. Acworth: You have been restricted, as I understand, under the Act of 1894. Suppose you wanted £1,000 more money, and you could show that the cost of carrying coal had increased, you would be able to justify charging that £1,000 on coal?—Do you mean, although we could not show that the cost of carrying coal had increased, £1,000.

3418. No, supposing you could show that the cost of the carriage on coal had increased, you would then be entitled to charge it on coal?—Yes.

3419. Suppose the cost of carrying Havana cigars had not increased, you would not be entitled to put up your rate on Havana cigars?—No.

3420. In the general economic interest of the country, is it preferable to get the extra money you need out of coal, where the actual cost has been incurred, or out of Havana cigars, where it would not make any difference?—I should say that you cannot answer that question, except in this way: in some circumstances it might be right to put it on coal, and in some right to get it out of cigars.

3421. Supposing you put 5 per cent. increase on Havana cigars, or silk hats, or other articles of the kind, would it check the consumption?—No.

3422. If you put an increase of 3 or 4 per cent. on coal, is it quite a serious matter?—Quite. I see what you are driving at. I did not mean to say that I am not quite in sympathy with the line of argument you are taking, all I mean was that there might be cases where coal was the right thing to put it on. The vice of the present system is, that you must put it on coal.

3423. That is the point?—I am entirely in accord with what you suggest.

3424. Sir John Simon: The practice under the Act of 1894 is familiar to several members of the tribunal, but I should like to put one question to you about the attempt to simplify it. This is right, is it not, in 1911, when the railway companies were called upon by the Government to make a sudden addition to wages, as a term of agreeing to do so, the railway companies were supposed to be given a concession, namely, that they might justify the increase of charge without identifying so precisely the causes of their own increased expenses with the particular commodity they wanted to charge it upon?—The Act of 1913.

3425. Yes?—Yes.

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3426. Has the experience gone to show whether owing to the greater ingenuity of counsel or the greater ingenuity of expert witnesses, whatever it may be, that as a matter of fact that simplified procedure has taken as long and longer than the old proceeding?—I must ask you to give the answer as well as the question. I heard you say it in your speech and I did not appreciate what you were referring to. I know it took 15 days.

3427. It is as a matter of fact longer than has ever been taken under the old procedure?—Yes, there must be something I had not got hold of, and I cannot think it is the right inference that the Act of 1913 is a worse Act than the Act of 1894?

3428. No, it is not. The true inference I suggest is that that shows it is always artificial to address oneself solely to justifying an increase as such; the real question is always what is the reasonable charge to make as a whole. Once you have got to that, you would not have the same elaborate tables?—I would like someone to know more about it than I do to abuse the Act of 1913. I confess I do not see the vice of it, but do not let me give away any of my friends if there is some point I do not see. It did take 13 days, but what is worse, I heard Mr. Balfour Browne say something about 7 years. I do not think the war entirely accounted for the 7 years. I do think it is a very serious thing that any procedure can hang up a thing like that for anything approaching 7 years. I am afraid one is not entirely in sympathy, and it is better to face the case where one differs from one's friends upon some of the views of the traders as regards procedure. I do not think the cheap and easy is quite as practicable as they think. It rather does set one thinking when you see the delay there was in that litigation. The solicitor of the Midland Railway Company, who conducted that case, was good enough to give me a time table of the proceedings in the Butterley case, and when you take the applications for discovery and for particulars and then when they are refused, appeal, and an appeal to the Appeal Court, it does not suggest that the desire, or the dislike you might put it of long and technical and protracted litigation, is on the other side of the table. The whole drawing out of those proceedings was not on the part of the traders. I have often thought if the railway companies, as I think they ought to have had, had had that 4 per cent. in their pockets during those 7 years, war or no war, we should have got a decision a long time before 1920.

3429. It is a very practical point. As the law and practice stands at present a trader challenges an increase in rate and therefore qualifies for fighting the increase without paying the increased rate in the meantime?—He does.

3430. I do not want to say anything which is unfair or offensive, but the fact is the longer the litigation is kept up the longer he postpones the day when he will have to pay if the increase is justified?—Do not let us say more than that there is no inducement to hurry.

3431. There is another thing which arises in the same connection. It is sometimes suggested that if the trader had to pay the increased rate before the litigation about it was over, the railway company should not only be answerable for returning the increase, if the railway company was wrong, but that the railway company should pay interest on the money. That would provide the trader with a new form of investment? In theory you cannot say it is unfair. Suppose we have had that money and at the end of 7 years it had been held that the increase was unjustified, the trader would naturally have a hardship being out of that money all that time. We must admit there is that difficulty, but if it was put to me, it is put by you perhaps, but if it was put by the tribunal, would the railway companies be content to pay interest. I am bound to say that I should say no, because I see the risk in having the money, it is just as bad as the other. If you have your money safely invested with railway companies they would know that we were good enough for the interest and it is getting a very safe form of investment. That is the practical difficulty which arises about interest.

3432. The moral is to have a tribunal which will decide these things as quickly as possible?—Get a prompt decision and the matter of interest does not matter.

3433. This, I think, will be a convenient moment to turn to the matter of the tribunal. There are two or three things I know you are anxious to say about it, but, first of all, let us get on the notes, are the railway companies whom you represent in favour of preserving the Railway and Canal Commission?—Would you excuse me, if you are passing away from the Act of 1894, because I know the traders attach great importance to that Act—when we say we want its repeal, let me make it clear, it arises because you have left out a bit of my proof which would have made it clear, all we mean is that in fixing up the machinery for future alterations of rate there must be provisions about getting assent, and what is to happen until the assent has been got, and so on. That will take the place of the Act of 1894. It does not mean that we want its repeal without anything taking its place, but the provisions of the new Act should be on different lines. I am sorry to be so long, but I would like to make this point. If, however, it is decided to continue the system of statutory maxima, then we do ask that the Act should be repealed. We regard it as a piece of panic legislation which may have been justified just as you give a smack to a naughty boy. The view of Parliament was that the railway companies had been naughty. We are not here to argue that point, but that is a piece of panic legislation which cannot be justified in having a permanent place on the statute book.

3434. Mr. Davis: I do not understand what you mean by a piece of panic legislation. What do you mean?—I would rather as you to read the Shaw Lefevre report, it is all set out. Parliament thought that the railway companies had made in a hurry unjustified use of their new powers, and there is no doubt there was a very great deal of feeling throughout the country.

3435. When was that?—That was in 1892-3, and the Act was passed in 1894. It is a chapter upon which we have a good deal to say if it became necessary, but it would be a long story.

3436. Chairman: There were two sides to the question, as usual. If I remember rightly, Parliament fixed the maxima and the railway companies asked for time to readjust their rates, they did not get the time, so they put all the rates up to the maxima. The traders jumped up and said, "This is an abominable thing to do." There was an inquiry, and then this Act of Parliament, which put, as you have said, a sort of second maxima, beyond which they could not go without justifying it?—Yes, it meant having passed maxima in 1892 and said, "Those are the charges you may charge," in 1894 they said, "Those are the rates you may not charge." What never came out clearly was this. I think the railway companies blundered. I think we should have taken the country into our confidence; no doubt, the idea was that the exceptional rates would be gradually replaced, so far as they were necessary. I could not help, in drawing my proof, thinking that what we did in 1892 was not, in seeing what I understand this tribunal has in mind now, to wipe out the exceptional rate and let them, as it were, replace themselves, but we did in a bungling way. The point is legislation passed to punish a delinquency, or meeting a temporary trouble, should not be permanently on the statute book.

3437. Sir John Simon: The Act of 1894, in one sense of the term, really abolished statutory maxima, because they established a lower level of charge, subject to a certain power of justifying an increase?—Abolished them after sitting hundreds of days to fix them.

3438. That is a warning to other people who might be thinking of fixing statutory maxima?—I hope it may prove so.

3439. Would it be convenient, if you have finished that, to get three or four facts about the tribunal? You said that you would be in favour and the railway companies would be in favour of preserving the Railway and Canal Commission, at any rate, for some purposes?—Very strongly.

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3440. It is the view of some very authoritative witnesses on the part of the traders too, we know?—So I have gathered from the evidence.

3441. Sir Thomas Ratchiffe Ellis and others have taken that view very strongly, and you think so too?—I would go as far as to say if it is constituted as I am sure was contemplated in 1882; that is to say, that you should have a tribunal which brought practical experience of law in the first place, of transport in the second, and of business in the third, you really have for railway questions about as good a tribunal as you could have. I quite appreciate what has been said about its unduly legal character at the present time, but that is not by the wish of the railway companies.

3442. It is not it is fair to say, looking at the history of the matter, that the history of the matter really is that in 1873 the business of a purely legal body like the Courts of Common Law was taken away from them and transferred to this Commission, which was then appointed for the first time apparently expressly on the ground that the Commission would preserve the judicial character and would not be a technical legal tribunal. That is the history of it.

3443. Mr. Balfour Browne: There was no judge then?—There was not a judge, but a lawyer. Traders were saying in 1872 exactly what they say now, and what they said then was given as an argument for setting up the Railway and Canal Commission; exactly the same argument is given for abolishing it. They said, "We want a business tribunal." In 1873 Parliament said, "You shall have it," and they took the business away from the Common Pleas and gave it to the Railway and Canal Commission. Now the same traders say the same thing. They say, "Give us a business tribunal and take it away from the Railway and Canal Commission," which was set up because it was thought to be a business tribunal. So that it is a curious position. That was in 1872 and it constituted the old Railway and Canal Commission.

3444. Sir John Simon: 1882?—No, the Act of 1873. There was not a judge, but a legal Commissioner. There was another inquiry in 1882. I hope the tribunal will let me know if I am too long; I do not know what is relevant and what is not, but it is interesting in this way. There was a further inquiry in 1882, and there was a good deal of argument brought forward for strengthening the legal element, not for weakening it or increasing the business, but for strengthening the legal element. One of the witnesses before the Select Committee said that there were so many important legal questions involved that it would be desirable to strengthen the legal element. If you turn to the report of the Committee you will see that they speak there of the suggestion made by the railway companies backed by legal gentlemen of eminence in that direction. If you will excuse me mentioning it, it is a matter of interest, the legal gentleness of eminence, or the principal one, was Mr. Balfour Browne.

3445. Who has since become a layman, you see. Let us get a matter of comparative law right here. Something has been said in the course of these proceedings of what is done in Canada or in the United States about this. It is pointed out there is no appeal from the decisions of the railway tribunal in those countries except on law and, I think, jurisdiction?—That is so.

3446. It is the same here?—That is the same here; it is really more limited here because—Mr. Acworth will correct me if I am wrong—in the States they can go from the inter-State Commerce Commission to the Commerce Court and then to the Supreme Court.

Mr. Acworth: No, the Commerce Court only existed for a year or two; it is dead.

Sir John Simon: There is an appeal in certain events right up to the Supreme Court.

3447. Mr. Acworth: I think you described it as jurisdiction and interpretation of the Act. I think that is clearly all that goes straight to the Supreme Court?—In the days of the Commerce Court it did go first to the Commerce Court.

3448. I had forgotten exactly about the Commerce Court. It did go first to the Commerce Court, cer-

tainly?—It is a limited appeal. You can only go to the House of Lords if the different Courts of Appeal differ.

3449. We have gone back into ancient history, one of the reasons—I almost think the main reason, why the Commission of 1873 was altered into the Commission of 1882 was that by process of certiorari, prohibition and mandamus and so forth, the lower Courts were regarded as having been rather harassed by the High Court, and it was thought that if a Judge was put there it would give it more position and it could not be mandamus and so on.

Sir John Simon: It is before my day.

Mr. Acworth: Take it from me that was the fact. I want to put this to the witness, will it be quite easy with this business tribunal to see that it is not mandamus and certiorari. The point has not been raised before?

Mr. Balfour Browne: It was principally the writ of prohibition that was moved and brought up the Railway Commissioners.

Mr. Acworth: It was the Hastings case.

Sir John Simon: The King's Bench exercises a general supervising jurisdiction over all subordinate tribunals, and will issue a writ of prohibition in a proper case to an Ecclesiastical Court or a County Court.

Mr. Acworth: Clearly you would not want a writ of prohibition to run against a business tribunal.

Chairman: If it decides business you would have to.

Mr. Acworth: On jurisdiction.

Sir John Simon: Would not it be met by being careful that the definition of the powers of the business tribunal were wide and, of course, within proper limits absolute. After all, Courts are not prohibited for fun, and it is not an easy thing to get prohibition.

Mr. Acworth: Sometimes people try to get a Writ of Prohibition not for fun but for good cause in their own interest. The point has not been raised, and I think it was just worth raising as it comes up.

3450. Sir John Simon: If I may I will make a mental note of it, because I agree it might arise, but at any rate, as regards the Railway and Canal Commission, whatever its demerits, if it is constituted as the legislature contemplated it should be, perhaps there might be something said on that score. Are you satisfied that it ought to be preserved?—I do. I think on the railway side we are all agreed with that.

3451. And a great many traders take that view?—Yes.

3452. In case there is a member of the Committee in doubt about it, I am right, am I not, as things stand, in any dispute before the Court between a trader and a railway company, the trader goes there and even though the trader fails he cannot be made to pay the railway company's costs?—Yes, that was enacted a few years ago in the interest of the trader.

3453. It is quite right, I think. Of course, as between two railway companies, one railway company makes another railway company pay sometimes, but as between trader and railway company the trader is entitled to go, and he does not burn his fingers in the sense of having to pay for the railway company if he loses?—The point that is being raised now has been raised again and again ever since 1872. I would like, I do not suggest I should worry the tribunal on it, to ask them to make some reference to the different occasions when that question has been gone into and discussed. I would like to refer to the opinion of Mr. Justice Wills before the Shaw-Lefevre Committee in 1893. He was a very experienced Judge, everyone in this room knows. He went out of his way to say in all his experience he had not come across more complicated and difficult cases to decide than in the Railway and Canal Commission Court. It is absurd to suppose you will get this question settled in a cheap and easy way. If you are it will cost somebody more money in another way than mere legal costs. I would refer to the opinion of Mr. Macnamara in the Committee presided over by Lord Jersey.

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3454. It is the Railway Rates Committee, 1906?—Yes; he gave very short but strong evidence on the question of cost, comparing it with arbitrations and other tribunals. Those who have had experience of arbitrations—some people have an idea it is a short, simple and cheap way, but after you have had one arbitration you do not want to have a second.

3455. There are two things we are both familiar with on this subject I should like to mention. It is quite true the number of cases that are tried in the Commissioners' Court are very few. Have you statistics, I am sure you know the facts. Is there an immense disproportion between the number of applications filed and the number of cases that are fought out?—That is so; then you have in addition—

3456. You must regard the Court as a Court of Appeal, which frequently brings about a settlement before the thing is fought out.—And you have the early stage of conciliation, and a great many cases are settled before they even reach that. There is another aspect of it. I remember an old legal friend who had a great deal of experience before the Railway and Canal Commission, it is not only the cases way Commissioners, who said what is very often forgotten. You have to remember, with a tribunal like the Railway and Canal Commission, it is not only the cases it hears; it is like a policeman, you must not judge the use of a policeman by the number of times he takes somebody to the police station and before the magistrate. They might be 100, but there might be 1,000 or 10,000 people who would have in the year gone before the Magistrate if there had been no policeman. The same is true of the Railway and Canal Commission. The law is laid down and they are to enforce the law, and, I think, speaking on behalf of the railway companies, one might say the reason there are not more cases is that it is not so much people are afraid to go, I do not believe that, it is largely because railway companies comply with the law. People lose sight of that. They would say, if there were hundreds and thousands of cases before the Commissioners, what a useful Court. But if only a few hundreds, what a useless Court it is. I think the inference is quite wrong.

3457. Now will you pass to the proposal that there should be as well, what has sometimes been called a Business Tribunal, which, I understand, means a tribunal presided over by a qualified and authoritative lawyer, who would have as his colleagues gentlemen who are not lawyers, who had special knowledge of the two great sides involved in the dispute. What do you say to that?—Unless you think it irrelevant I would like to refer the tribunal to the evidence given by Mr. Andrews before the Loreburn Committee. It is really an admirable statement of the pros and cons of the Railway and Canal Commission.

3458. By all means.—It is much too long to refer to at any length, but it does state it very admirably—he was heard at great length over two days. I do want to impress the members on the tribunal that this thing has been thrashed out and out and out again, and there seems no end to it. He puts very strongly the case for the Railway and Canal Commission, showing what a good tribunal it is and how exaggerated the disadvantages are. He does bring out, I hope my friend on the other side will excuse me, one cannot help drawing attention to this opinion, when it comes to litigation before the Commissioners it is not the railway companies who are so technical. Take this 4 per cent. increase of rates, the Government intervention, the Government saying to railway companies, you must pay higher wages and we will introduce a Bill into Parliament which will no doubt transfer the burden to traders, an above board thing everybody knows. A lot of delay introducing the Act, never mind that, the Act was passed. The companies put on a moderate increase, it was 4 per cent., and I was in it. One hoped that would go through without objection. What was the first thing we were met with. I am not saying this, Mr. Balfour Browne will know, to create bad blood, but still, it is fair we should draw attention to the fact, what was the first

thing. The first thing was a heap of purely technical ultra-legal points against this, not it is not fair for Parliament to have done this or you put on too much, you did not stick it in the right form in the rate book. There is no Portin in the world who would have taken the points. They all came to nothing. When you are criticising the tribunal and you talk of cost and technicality it is fair to ask who is it who generally relies on the technicalities and spins these things out. I make no accusation, but I say it is not the railway companies. Mr. Andrews does treat it in a chaffing good way, in the way I hope I am doing this: he does raise the point now of classification. That is one of the things which has been discussed; we are to have a cheap and easy way of altering classification. By all means. What has been the practice in the past? Are counsel briefed in order to alter classification? They never were for years until a question was raised as to the classification of unripe bananas. One would wish they were not classified at all and did not exist, but they had to be classified. That was brought up by the traders and for the first time, I am sorry to bring Mr. Balfour Browne in again, but he is in all these shows; always he could not help being briefed; and there the railway companies were met by a Queen's Counsel and a junior to discuss the classification of unripe bananas. It is not true, if anyone thinks it, that it is the railway companies who wish to make these things expensive, because they do not.

3459. Mr. Balfour Browne: What question was that in answer to?—Whether I am in favour of the abolition of the Railway and Canal Commission. Was it too long an answer? I am sorry. I will try and say "Yes" or "No" to the rest of the questions.

Sir John Simon: You have made that reference very clear what Mr. Andrews said in before the Commission of Lord Loreburn. We shall have an opportunity of looking at it.

Mr. Balfour Browne: I thought you had gone to the other point of the tribunal.

Sir John Simon: I was doing so, and Sir Alexander rightly said he would like to give a reference to what Mr. Andrews said.

Chairman: It is distinctly useful to us that he should.

3460. Mr. Acworth: Will you give the reference on the note?—It is the 29th and 30th days, the 24th and 25th June, 1914.

3461. Sir John Simon: That is the reference to Mr. Andrews' evidence?—Yes.

3462. I rather fancy he makes a reference, I do not know whether any member of the Committee would like to see it, to some observations of Lord Moulton about it?—Yes, it is on page 11 of the 30th day. They are very short; perhaps the Chairman would let me read them. Mr. Andrews says, "May I be allowed to add the opinion of a very eminent judge, Lord Moulton, generally on the Commission, because it is relevant to what I have just been saying. He says in giving judgment in the National Telephone Company v. the Postmaster-General," then he quotes it. This is the quotation: "The business assigned to the Commission initially related exclusively to matters affecting railway companies or canal companies, but the suitability of a Commission consisting partly of legal and partly of lay elements has shown itself so markedly that from time to time the Legislature has assigned to it other matters, in some cases making the consent of all parties," and so on, but the point was the suitability of the Commission consisting of partly of legal and partly of lay element.

3463. We will not deal with that more now. Assuming you preserved the Railway and Canal Commission it is proposed that there should be also constituted what has been called this business tribunal. I said something about it on behalf of the railway companies just now. Speaking for the railway companies, subject to defining what the business tribunal is going to do, are you prepared to agree with that?—Yes, if it is the wish of the traders. I do not think the traders should be obstructive, I do not think we

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ought to ourselves. They think there is a great necessity for it and that it will do a great deal of good; never mind, it is not for us to prophesy, I do not think it is for the railway companies, and that is the view I am instructed to represent here in the matter, if the traders think it will help towards business and the tribunal agree with them.

3464. Let us dwell on the distribution of topics. Take first of all the question like undue preference and through rates, and the question about traffic facilities. Which body, in your view, should deal with questions of that sort? Take undue preference?—Undoubtedly the Railway and Canal Commission. I say so without hesitation and for this reason. Those questions raise almost invariably difficult questions of principle; it is not merely a question like saying whether a particular article falls in a class of classification, whether radiators are pipes or are not pipes, those are not the sort of questions. Almost every question of undue preference which arises turns on questions of broad principle. I have thought a good deal over the matter and I do not see how that class of questions can be entrusted to some body that cannot provide for gradually evolving something in the nature of a code; what I mean is, working from precedent to precedent and so keeping a continuity of decisions on lines of principle. You may say it is not law; of course it is not law in a sense; I suppose it is not common law, and it is not interpretation of statute law except in one wide sense. You have such wide words, "Undue preference," which may mean almost anything, and what they are to mean is to be built up it seems to me by a tribunal basing precedent upon precedent. I seems to me to do that you must have the legal element, you must have somebody to decide those questions which is more or less in the nature of a Law Court. I think you must have arguments addressed to them by somebody more than a mere business man. I think it must be somebody who is trained with a legal training to present the arguments, and I think the decisions have to follow some general line of principle.

3465. *Sir John Simon*: It is perhaps not immaterial to note that it has been found well to keep the same High Court Judge doing the commission business for a number of years on end, so far as is possible to sustain a tradition of interpretation?—Undoubtedly.

Mr. Balfour Browne: Mr. Justice Wills was continued for 10 years.

3466. *Sir John Simon*: Yes. Those of us who are familiar with the Court know there are a very limited number of Judge's Judgments to look through. There is Mr. Justice Collins, Mr. Justice Wills, Mr. Justice Wright and Mr. Justice Bigham. There is undoubtedly a gathering in the Court all the time in the mind of the presiding Judge of a very special knowledge, which I do not think other Judges of the High Court necessarily enjoy of some, of some of these legal complications?—May I put it in this way? Looking at it from the point of view of the railway companies, it is very essential to us that we should know what undue preference is. Railway companies when the Act of 1854 was passed could not have known. They had to guess what undue preference was. It is very essential from our point of view that there should be certainty about it, and that can only be arrived at by continuity of decisions it seems to me. I should have thought it was as important to the trader.

3467. Mr. Balfour Browne began his speech by pointing out the enormous importance of the industries he was representing. One can hardly imagine anything more important than that. Now about what the business tribunal might do, would you concur that there is a question as to whether a rate which has been thought to be a reasonable rate is reasonable it should be referred?—I have followed these proceedings as well as ever I could, but one has a great deal to do. Might I ask what the questions are which the trader asked to have referred to the business tribunal?

3468. Some of them go very far. They have gone very far indeed?—I could not be here when this matter was discussed.

3469. Some of them dealt with undue preference. *Chairman*: If you look at page 33 of the seventh day you will see the particular question.

Sir John Simon: Perhaps you would look at it. Would you take the seventh day's proceedings?

Chairman: Perhaps I might put one or two matters as you were not here, Sir John?

Sir John Simon: I should be much obliged.

3470. *Chairman*: Mr. Balfour Browne suggested, if you look at the bottom of page 33, on the right-hand column, that the whole of the matters should go to the Railway and Canal Commissioners, except that he said with regard to Nos. 5 and 7 at the bottom of the page those should be abolished altogether—all those matters to go to that tribunal?—Yes.

3471. With the exception of 5 and 7—those should go nowhere, as he did not want a tribunal for those?—It is the first 5 and 7.

3472. The second 5 and 7. Disputes between railway companies he would leave to go to the ordinary Common Law Courts, and he would object to the tribunal acting as arbitrator in any case which might be referred to it?—Might I go through the questions?

3473. I am calling your attention to them, and now I am going to call attention to the second one. Mr. Thomas, on behalf of the Association of British Chambers of Commerce, suggested as to 1, 4, and 6 in the second part, that is to say, to require railway companies to afford facilities and junctions in connection with receiving, forwarding, and delivering traffic, and 4 to require the execution and repairs of works, and 6 to enforce the proper publication of rates and due setting forth of the component parts of rates; those three should go to the tribunal and not to the Railway and Canal Commission, but otherwise he did not object to the distribution set out here. Perhaps you would not mind bearing those in mind and then just tell us with regard to the division which appears upon this page how you think the distribution ought to be made.

Sir John Simon: Might I just ask one question for my own information before that it done? The end of 1 is very conveniently put where it is, but it really trenches upon another question, namely, as to the procedure to be followed if a rate is to be changed. What is to be the authority to determine whether any, and, if so, what, variation should be allowed either upwards or downwards? It almost touches on the question, is that change to be regarded as authorised until challenged, or have to go to the tribunal and get it authorised?

Chairman: Does it matter which way it is? These last three lines would apply either to putting a tribunal which would hear the challenge, or to putting a tribunal which would, in the first instance, authorise it.

Sir John Simon: So long as we keep the two questions distinct.—Taking the number one, the new tribunal to my understanding is that it is this Committee that is going to do that.

Chairman: I think that is a mistake. It really would be the rates having been originally fixed by Act of Parliament the tribunal should be the authority to determine them, and if so, what variation should be allowed upwards or downwards.

3474. *Sir John Simon*: That is really what is meant.—I think the view of the companies as regards that, if it was a question of an individual rate, or a small number of individual rates that normally could not be expected to raise a general question of principle, is that they would have no objection to going to the tribunal on that. If it was an all-round increase, take a thing like the 4 per cent., or if a distinct question of principle was involved, as to the basis on which these increases had to be made, I think if it went first to the tribunal we should think it very essential that we should have a means of appealing to the Railway Commission. I do not think we should be content to leave a

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matter like an increase of 4 per cent., involving questions all over England and running a long way into these figures, to anybody who had not something like the status of the Railway Commission.

3475. *Sir John Simon*: You are distinguishing the case where a trader or a combination of traders raises a question, or the railway company does, as regards a particular group of charges?—Yes. You see, supposing the new system comes about, and you have got your class rates, or as is talked of, a very large number of exceptional rates are all charged on a tariff—that means a very large proportion of traffic will all be charged at the maximum, using the maximum in rather a different sense from the present sense. Then you will have probably a number of rates below that which will be exceptional. You must assume a trader has been given an exceptional rate as a result of this inquiry, and the company, for some reason or other, thinks that rate should go up and he should be charged the tariff. I should have thought that questions like that more particularly should go to this tribunal. It seems to me a question of that sort would almost entirely be, is it fair to this particular trader? The argument might be that he has built up his business on the faith of this exceptional rate. Is it fair to deprive him of that? He may have had an exceptional rate as a result of competition. The competition has ceased. Is it fair that he should lose the benefit of that low rate? My opinion is you are on a very important question of principle there, whether the cessation of competition is sufficient. I know that is a thing which has exercised the minds of wise men in the United States as a principle. However, I must leave that for the moment.

3476. *Chairman*: Put shortly, your answer is you would not allow general questions of principle or questions of great magnitude to go to the business tribunal?—Yes. May I read the actual words that I put in my proof? They are almost what you have said. General principles or all round increases were the two words I used—I could not think of any other. It is awfully difficult to be specific in language over it.

3477. We understand it. But it does make this tribunal of very little importance?—Unless it will be content to be a Court of First Instance. If it will be content to be a Court of First Instance that is another matter. I would not say we ought necessarily to have the decisive voice in deciding, but supposing we had to get somebody to say this is important enough or does raise a question of principle in a way that justifies an appeal, I think we would be content; but I do not think we ought to be shut out, as the Chairman has kindly put into my mouth something which expresses really what I mean to express, in cases which are important on account of their magnitude or on account of the principle involved. A big principle is sometimes involved in a little thing. In such cases I do think we should have a chance of getting beyond this tribunal.

3478. *Sir John Simon*: You are throwing out the suggestion that that might only be with the consent or the approval of somebody, the Minister of Transport or somebody who says: "Well, I must admit this is important enough, and you ought to be allowed to discuss it before the Railway and Canal Commission"?—That is what I had in my mind, Sir John. Possibly some application to the Commission itself might be the way of deciding that.

3479. At any rate, supposing one is dealing with an attempt to get a list of rates very accurately to correspond with what is reasonable in the case of A, in the case of B and in the case of C; all that you think very properly might be left as a final matter to business tribunals?—Yes, I think so, if that is the wish of the trader.

3480. We have not quite finished this list?—We have only just begun it, as I understand. It is a long list.

3481. Number 2. The next one is classification. This Committee which is now sitting is in fact at a later stage, I gather, going to decide matters of

classification. Would you approve of the business tribunal taking up the question of classifying new articles?—I think so, supposing it was a tribunal constituted something like this present Advisory Committee.

3482. You could not have anything better?—Exactly, but one is so in the dark as to what the tribunal is to be.

3483. I should have thought you would have agreed from every point of view it is most undesirable to keep the Railway and Canal Commission with its special qualifications dealing with pure business questions of whether a particular consignment is cats or dogs?—With all submission to you, Sir John—you know much more about the Railway and Canal Commission than I do, as you are more often there—but was not there something peculiar about that radiator case? Must not that question have arisen incidentally. It was an increased rate, if they were radiators, and it was not an increased rate if they were not.

3484. I think that is just, but that has not always been so?—I entirely agree.

3485. There has been a case within the last month or two where the dispute was whether a particular consignment is to be rightly regarded as of tar oil or is it rightly regarded as naphtha. No doubt the Commission decided the case with a great deal of skill and capability, but it is essentially a business question?—I agree entirely.

Mr. Jepson: In the tube case it was the distinct wish of the traders that the Commission should be clear that these tubes were reservoirs.

3486. *Sir John Simon*: Perhaps they thought they could persuade the Commission that a tube was a reservoir and not persuade anybody else?—I have never seen, myself, why the Railway Commission should not be made more of a business body than it is. I should have thought that the business questions could be decided by the two lay members. If you had a man who was a railwayman and a practical expert—I do not mean a general manager who happened to be a lawyer—and a practical business man, I should have thought that, sitting by themselves, they might have disposed of a large number of business questions. I should have thought the Judge might only be brought in on the legal part of the business. That has often occurred to me. You do not want the post to be "the best paid sinecure" in the country, as somebody described it.

3487. *Sir John Simon*: As a matter of fact, the two laymen on the tribunal on all questions of fact are constantly in the position that they have to go and give an opinion which is in the nature of overruling the Judge. The Judge is one of three. If the laymen agree, it does not matter what the Judge thinks about the matter of fact, as the other two people will decide it.

Mr. Balfour Browne: That is, on the question of fact?—I only thought that the Judge might be absent altogether, if they were discussing questions of unripe bananas.

3488. *Sir John Simon*: The next question is, what is to be put in the tariff?

Chairman: That would go with No. 1?—That is what I thought. I have been through those in a casual way.

3489. *Sir John Simon*: Four is really covered by what you said about two?—I quite agree. One and three and two and four go together.

3490. *Sir John Simon*: Five is a special case, really, of four.

Chairman: Yes, it has been recently discussed.

Sir John Simon: Yes.

The Witness: Five, I should say, so far as it goes to anybody but the railway company, is a matter of importance. The railways are very touchy about that.

Sir John Simon: There is one caveat I think the companies will probably want to enter with regard to 5, as it is expressed. I speak from knowledge of a recent case. I know that the railway companies hitherto have attached considerable importance to

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the right which they have under the existing law to be themselves the judges, *bona fide*, as to when goods are dangerous. They have not hitherto shown themselves willing to leave that to be decided as a question of fact by somebody else, with the result that even though they *bona fide* consider an article dangerous they will be held capable of dealing with it without knowing what it is.

Chairman: I am quite conscious there is a difference of opinion on that. The trader would probably object to the last three lines of that, and the railway companies would object more or less to the first three lines.

3491. *Sir John Simon:* I do not want in any violent way to object, but I throw out that one point that the railway companies have hitherto thought it more desirable that they should be in a position to decide what the goods were of which they should have notice as dangerous, so that they could deal with them in their own way.—There are two questions as regards 5, are there not? Should it be anybody other than the railway company, and, if so, who should it be? As you say, though I would rather that came from a practical man, the railway companies do attach a great deal of importance to that matter. When you get to the second stage, who it should be, perhaps it is more for a practical man, but I should think that if it was to be taken out of the hands of the railway companies, it should be turned over to some body which was expert in dangerous things, because the result of an accident might be very serious.

Mr. Jepson: It has always been the practice of the railway companies to keep in their own judgment what is dangerous, and not let anybody interfere with that. But while they have done that they have not refused to carry these things that are dangerous. They have always laid it down that they must have the deciding voice as to the necessary regulations under which they can say whether dangerous goods may be carried, but they have not been obstructive in any way. That is my experience.

Sir John Simon: It affects or may affect the rate of charge?

Mr. Jepson: Yes.

3492. *Sir John Simon:* Six seems to have been covered by what has already been said.

Chairman: That would go to the tribunal. I do not know whether Sir Alexander wants to cut that down?—What does No. 6 really mean? Does it mean to settle the form of our consignment notes?

3493. The first part of it is that the railway companies are allowed to charge a reasonable rate, toll, or charge.—But all our rates will have to be reasonable.

3494. I am assuming the bulk of rates are fixed by the tribunal?—Yes, an indeterminate amount.

3495. A few amounts left?—Like the exceptional class?

3496. Yes.—I think the answer would be, so far as it has to go to anybody, if you substitute them for the jury or for the arbitrator, the answer would be yes.

Chairman: You think the second part of that same Clause 6 will go?

Sir John Simon: There are two important words in the middle.

Chairman: Condition?

Sir John Simon: That is a very serious matter.

3497. *Chairman:* Having regard to the rule of law that the railway company must only make reasonable conditions to exempt itself from liability as the carrier, would you entrust the tribunal to say what was a reasonable condition?—I am afraid not. I am afraid we should think that ought to go to the Railway Commissioners.

3498. *Sir John Simon:* Let us think for a moment. As things stand at present, the question whether or not a condition for instance in the consignment note is a reasonable condition under Clause 7 of the Act of 1854 is no doubt a question of law, but it is not decided by the Railway and Canal Commission; it arises in the Common Law Courts?—Yes.

3499. It touches the owner's risk point and all that. You have to have conditions which are reasonable and signed. It is no good having them signed if they are not reasonable. There is a long line of authority as to what is reasonable.—Is not the suggestion to take that away from the Law Courts and give it to business tribunals?

3500. That is what makes it rather serious.—I would not have minded going to the Railway Commission and substituting them for the Common Law Judges, but I do not like the idea of taking it to a business body.

3501. *Sir John Simon:* What would have struck me was that, unless we are going to constitute special bodies who are going to determine all questions at issue between the traders and the railway companies as to whether a debt has been paid and whether the Statute of Limitations applies, and all sorts of things, there is really no more reason why that should go away from the Common Law Courts than any other question. The question is whether there is a valid contract made between the parties. My friend Mr. Thomas points out it is not a consideration which by any means is to be decided in favour of one side without thinking of the other. Consider the case of a small tradesman who has a claim against a railway company for the loss of something, which he brings in the County Court. He claims 10s. or £1. The railway company very likely may seek to rely upon the terms of some written contract note. I hope, as a rule, the railway company will not rely on it unless it was good law, but still there are temptations open to us all. It would be a very hard thing to say, "You have to go to some other tribunal to find out whether that is a reasonable condition." Again and again the County Court Judge would say, "Well, that was decided by the Court of Appeal ten years ago, and there is an end of it." So I do not think it is necessarily to anybody's advantage to make that point?—Quite so.

3502. Then we come to a very serious thing under 7?—I must say, on these consignment note conditions I should have thought that what took place in 1908, when that Board of Trade Conference was held, was such a good illustration of the best way of dealing with these things. What happened then was this. Mr. Lloyd George, who was President of the Board of Trade, got some six or eight of the general managers to meet a number of representative traders, and this consignment form was one of the very things that was discussed at very great length, and settled across the table in conference. We came to a unanimous report. There was a little give and take on each side. As a result of that discussion we got to know where the traders felt that the shoe pinched, and we set up a form of consignment note which has worked ever since. It seemed to me ideal to fix the consignment note in that way. But that is very different from giving it to a body of business men to settle against the agreement of the railway company what their conditions of carriage will be. It seems to me that would be going a tremendously long way. There is a difference between meeting the traders and discussing—then you generally come to an agreement—and taking their decision. They have not to run the show, after all, and we have to.

3503. *Chairman:* You may remember in your business tribunal there are an equal number of traders and railway representatives, and an independent chairman. It is not leaving it to the traders to settle their own case?—I suppose the chairman would have a casting vote; or would it be a unanimous decision?

3504. Without going into details, probably he would have a casting vote? There would be an equal number of traders and railwaymen and an independent Chairman; who, if they were divided, would take the judgments of each of them in turn; and the majority would prevail?—It is very difficult, until you have had some experience of a body like this, and until you know their procedure, what to say about it. I read in all this a desire for what is called a free-and-easy, happy-go-lucky, speedy pro-

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cedure, with no technicalities. It is rather bad luck my having been a lawyer. You do get some respect for the traditions you are brought up in. One witness said, one advantage of this body would be that it would not be as particular about receiving evidence as lawyers are. That gives the lawyer a shiver, to think you can hear evidence regardless of its relevancy or whether it is hear-say, or anything. It may appeal to a certain class of trader—I do not know—but you cannot expect it to appeal to a man who has had a legal training. I should have thought a way of getting wrong decisions, ultimate trouble, expense, friction and everything else, was to have people who would hear any kind of evidence. I cannot fancy anything more likely to protract proceedings and get at the worst results. I am awfully sorry, because I would like to agree with the other side as much as I can; but those are the sort of things which do make one a bit frightened, until you actually see the tribunal and see the gentlemen, and know what its procedure is going to be. Is the Chairman going to be a lawyer?

Sir John Simon: Might I get at close quarters with the particular phrase in No. 6, because frankly at present I do not understand it? Perhaps Mr. Gore-Browne would help me? Is it suggested that in any case where the reasonableness of a conditions is to be dealt with, you will not be able to get that matter decided in the course of a simple claim in the County Court, but the County Court Judge must say: "I have no jurisdiction to deal with this, and you must go to the business tribunal?"

Chairman: I do not think that can have been meant. It might have been meant that the Association or the Chamber of Commerce might bring the question before the tribunal, whether a specified condition was reasonable or not, and get a sort of statement of a case. If it was determined it was reasonable, then it would be binding on the courts of law. If it was determined it was unreasonable, it would be also binding on the courts of law.

Sir John Simon: If nothing was determined, it would go on as before?

Chairman: It would have to do its best.

Sir John Simon: There is a prospect of some conflict.

Chairman: I see that, obviously. The reasonableness of a charge is a matter which, in the same way, might have to be decided in a court, when it was tried for the first time; or it might be settled by appeal to this tribunal.

Sir John Simon: I am not quite sure that that is so. It raises an important and rather a fine point. As the law stands at present, a railway company is entitled to go into a law court to get its bill paid. It says to the trader who has used the railway: "This is my charge. The trader says: 'Very well, I see your charge. Take my goods.' That makes a common-law contract. It would not be a good answer to a demand under a common-law contract for a man to say: 'I am thinking one fine day of challenging this charge on the ground of undue preference.'"

Chairman: How about an unusual thing like a wild beast, or something of that sort, which does not appear in the rate book?

Sir John Simon: That is under Part 5 Schedule.

Chairman: On that being carried, the railway company makes a charge and says: "We want £5 for having carried a lion." The man says: "That is unreasonable." If the railway company sue him, I suppose the court would have to decide whether it is unreasonable.

3505. *Sir John Simon:* I think that is so.—Under the Rates and Charges Act, my recollection is there are certain clauses where it simply says "a reasonable sum." There are others where it says "a reasonable sum," and also lays down the procedure—that it is to be an arbitrator appointed by the Board of Trade. I take it in one of the cases it is an arbitrator appointed by the Board of Trade; and in the other I take it it would be a jury.

3506. Or a tribunal of fact?—I think the suggestion in this case was, that this business tribunal might be what was provided for in the Rates and Charges Act.

Chairman: I think the primary idea is, that the tribunal should take the place of the arbitrator.

Sir John Simon: If that is the object, I can see the good sense of it. There is always this to be remembered, but it is a little difficult always to keep it in mind. We are speaking of this question, whether a charge is a reasonable charge, as though the question arose in a dispute as a bare question, entirely by itself; but all experience goes to show that when unfortunately people fall out, before they have differed very long, they find they have more than one reason for falling out. It constantly happens in practice that a complaint involves several questions. It might involve, for instance, what is the weight of the stuff that was carried; and how many days' notice was given; did the stuff arrive in an injured condition or not; as well as the question as to the condition. When the County Court Judge is dealing with it, he finds each of these facts one after the other on the evidence, and then ascertains whether he has got a situation in which he must determine whether the condition is reasonable. It is not always a wise plan to choose a tribunal and say: Now there is one of those questions which that tribunal will decide.

Chairman: I do not suppose anybody would suggest an action ought to be split in two.

Sir John Simon: I do not think so.

Chairman: Unless it is a question of deciding in advance whether a thing is reasonable, where it is referred to a tribunal by the terms of the Act itself, it would be practically impossible to appeal. I have no doubt that the traders would like to have somebody to whom they could go when they had entered into a consignment note, to whom they could say: "Well, here is the condition. The railway company say they will not carry it except on that condition." The trader would like to have an appeal to some tribunal to say it must be accepted on that condition, or to leave it. One thinks of a man who is sending things on every day of the year. He would not trouble about what he sends in the first week or the second week, so long as he could get a decision as to what is to bind him in the future.

3507. *Sir John Simon:* I see. I do not think we had better delay in discussing about that; but one sees the point?—It was just occurring to me, would it be a good plan for us to put in writing our considered answers on these points?

Chairman: I think it would.

3508. *Sir John Simon:* I think that is a matter which the Committee would like to have been helped about this morning; and we are sorry we could not do it. We were so much occupied with some other questions we are preparing. Without delaying with them or trying to answer them, 7 and 8 are very obvious and important matters, because 7 raises the whole question of a siding rate?—It does.

Chairman: That is one of the things the trader would want on the evidence we have had.

3509. *Sir John Simon:* No doubt; but the question will be whether the railway companies on their side could assent to that being taken away from the Railway and Canal Commission, because it is a very important topic?—May I take you through one or two of these, so as to understand it, if we are going to answer it? As regards 8, is not that like 1 and 3? Is not that a suggestion that this tribunal should fix it, or Parliament on the advice of this tribunal?

3510. *Chairman:* Perhaps?—All through this one is very much puzzled in all these questions with the point: Are you dealing with the thing at the outset, or are you dealing with it when the variations may come?

3511. It is a question which is likely to come up at a later stage?—It may be settled to-day.

3512. *Sir John Simon:* I think we can leave that. I think there are some matters which you are clear ought to be left to the Railway and Canal Commis-

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sion, as indeed some traders have insisted?—That is our view.

3513. Undue preference would be a clear instance; and I suppose the statutory justification for the charge would be another, if that arose?—We think undue preference. You often hear it said that undue preference is a mere question of fact, and what do you want a lawyer for? But I do want to say that is not our view; and we have really considered it carefully. If you were to read the cases about undue preference, I think most people would come to my view; but that is because it is my view, I suppose.

3514. Is there anything else you wanted to say about the tribunal; because I would like to keep it in compartments, as we have a very important matter to deal with as regards tariffs and disintegration?—Would you let me hurriedly cast my eyes over my proof?

3515. *Mr. Acworth*: I would like to put a question on this point to see if I can get the answer on the note.

I quite follow that you have pressed a strong case in favour of separating certain things between the Railway Commission and the tribunal?—I have not pressed for it. I would be quite content with the Railway Commissioners. I am not here to advocate a business tribunal.

3516. Perhaps I put it too strongly. Let me put it in this way. If there is a tribunal there should be a delimitation of function?—Yes.

3517. You said the Railway Commission should be a judge, a business railway man, and a business commercial man?—I thought that was what the Act of 1888 had in mind.

3518. That is what you would desire?—Yes, I think so.

3519. The tribunal which is suggested shall be a distinguished lawyer and a business railway man and a business commercial man?—I had not considered the point, but I think the view of the railway companies is if you were to lay emphasis on a distinguished lawyer as distinct from a judge they would like the practice under which the judge of the High Court takes the position for a limited time.

3520. *Mr. Jepson*: You are speaking of the tribunal now set up of the Railway and Canal Commission, but *Mr. Acworth* is referring to the new tribunal.—I beg your pardon.

3521. *Mr. Acworth*: Let me make it quite clear. If there are to be two bodies, the Railway Commission is to have a judge and two colleagues, one railway man and one business man?—Yes.

3522. The tribunal is to have a distinguished lawyer and two colleagues, one railway and one business.—I did not know that.

3523. That is very much the popular suggestion as I understand it?—Yes.

3524. Do you lay stress on the importance of the Commission versus the tribunal for certain points on the ground that it is a judge instead of a lawyer without the position of a judge, or, if not, on what ground do you differentiate definitely?—Stated in that way I am not sure that I understand the difference between the two bodies. It seems to me they might be the same three individuals. If in each case you are to have a distinguished lawyer and a practical business man and a practical railway man, I do not know that there is any difference between the two. I had an idea that the tribunal would be composed of men who did not give up their whole time to the work. I thought that they were business men who would be called together for the occasion of a particular case, and the rest of the week would be attending to their business. I had not in contemplation that they would be whole-time job men.

3525. *Chairman*: What came out this morning was a suggestion from the traders that the modified form which has been discussed might possibly be the best, an independent Chairman who is a lawyer, one permanent railway man and one permanent trader, but in addition to that there should be a panel of traders and a panel of railway men from whom two people would be called, one from each, to assist in deciding particular questions. The last two

named people would not be whole time men but would continue to keep at their own particular business, keeping themselves in touch with the trade world and the railway world respectively. I think that was the suggestion which got most support this morning. It makes rather a larger tribunal than the Railway and Canal Commission, but constituted as to its nucleus in the same way with, the possibility of the addition of men who are actually in personal touch with the business who would still be people who would take part in the decisions, but the other people would only be assessors and advise but not take part in the decisions. Would that sort of tribunal secure the approval of the railway companies?—I think it would because that is merely the old Railway Commission. It is exactly the Act of 1873, except that you leave room to call in an extra railwayman and an extra business man to help them occasionally, otherwise it is the old Railway Commission.

3526. Really the origin of the suggestion, I think, is that the alternative of having one Chairman and a panel, or having one Chairman with permanent colleagues did not meet all the requirements. There was a great desire for continuity and uniformity and a single Chairman might not be enough for that if the panel was suddenly changed. On the other hand, there was a strong desire that the panel should be in touch with the present trade and railway interests and the trade of the railways should not, perhaps, be represented by somebody who had ceased his connection 10 or 20 years before with business. I think the ultimate suggestion was a compromise between those, so that you might have an assurance of continuity and an assurance of being in touch with present day conditions?—Yes. Then I am right, am I not, in saying, apart from those additional members, the constitution of the two bodies would be the same provided the salaries were the same—something turns on that—except that one would be a Judge and the other would be a distinguished practising barrister?

3527. The whole-time position, do you mean?—Yes.

3528. It would be a whole-time position?—I understand.

3529. I think it is sometimes thought that he would have so much to do that he would have been withdrawn altogether if he were a Judge from the courts?—If you put it in that way one cannot help thinking it comes back much more to procedure than to the individuals. Given the same salaries, it would be quite a toss up whether a man was a railway commissioner on the business tribunal or on the Commission Court. If it was £3,000 salary in either case you could not tell who would be in one and who would be in the other. It is rather invidious for me to suggest a differentiation between a Judge who has been a barrister and a barrister who has not been made a Judge.

3530. *Mr. Davis*: You do not call salary a principle?—It has a good deal in fact to do with the quality of the article which comes along. I was not on that point. I hope I have not taken a wrong point in referring to salary, but what I really had in mind was this. The important thing is what is going to be the difference in procedure. If the one is going to be a much less formal procedure than the other, that would seem to be the only difference between the two bodies. I think some of these questions would admit of being treated with a less formal procedure. Is not that so?

3531. *Chairman*: I think there is a very great deal in what you are saying. It seems to me they are two very similar bodies. It may be that the one would not be so formal in its procedure, but its procedure might be quicker and might dispose of matters in a way just as satisfactory to the parties, even if it was not so scientifically accurate?—Yes.

3532. You have sat upon one committee and another where people, instead of giving evidence, have come and made statements?—Yes.

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8533. If they are not challenged, they are accepted. That is not taking evidence properly, of course, but it may work very well if the people who come before the tribunal do their work well, and are well-informed as to their facts, and make statements which are 99 times out of 100 accurate, and if the man who is there on the other side is acute enough to see the inaccuracy of one who is not very accurate, and call attention to it, you would get along all right without calling witnesses and swearing them. I should imagine a good many traders' and railway cases could be done without witnesses being called at all, in the ordinary sense. On the other hand, you must reserve the other case, where it is of the utmost importance that evidence should be given strictly and decidedly. You may trust the tribunal more or less as our commercial courts do sometimes, to go in a somewhat happy-go-lucky way, and sometimes to be very strict—I think I should accept everything you say, subject to this. I think it all turns on what is my opportunity, if I may say so, without disrespect, of getting beyond the happy-go-lucky tribunal, when in my view the occasion demands it. I say "my view," though I quite see it would have to be somebody else's view. I do agree with a great deal you have said. I do think that a very large proportion of cases would get settled, as you say, in that quick way, but then you have the odd case, which is very vital to me. It is perhaps not sufficiently appreciated. I have not put my case well, or it has been done in a hurried way, but it is vital to me that I should get a considered judgment, with something like the formality of legal proceedings. If I get assured of that, and if the trader can be assured that I shall not make an obstructive or bullying use of it, and I shall not always be appealing just for the sake of appealing, then I think you meet the two cases; but I think, from our point of view, it is of vital importance that in my cases we should be able to get beyond this new tribunal.

8534. *Chairman:* That might be met by putting in a provision that an appeal might be either (a) with the consent of the tribunal itself, which it would be expected to give in cases of lack of jurisdiction, or (b) on leave from the Court of Appeal, whatever might happen to be the Court of Appeal to which it had to go. In practice at the present day on interlocutory questions you can only appeal with the leave of the judge from whom you are appealing, or by going to the Court of Appeal and getting leave to appeal.—I think that would meet my objection almost entirely, but one does feel rather a responsibility in answering for a lot of railway companies on points which are going to affect their procedure for a number of years. If you would leave it there for a moment, and let us put in a considered answer in connection with these questions, personally I should be very much obliged.

8535. I am particularly anxious to have your view before you have had time to consult your colleagues, because what really helps one is what a man of experience and thoughtfulness really thinks. It may be that sometimes a majority is not so useful as one or two of the leading men of the railway world.—I think if you get on to personalities, I am as much a stickler for the old form of procedure as any of them. I do not think I am giving away my colleagues in any way, but one would like to talk it over and give a considered answer.

Sir John Simon: There have been times when even the Railway and Canal Commission Court has not been very formal. Mr. Justice Bigham presided at one time.

Chairman: That would account for a great deal.

8536. *Mr. Davis:* I would like to ask you one or two points to see if I have grasped the whole position. I do not want to ask my questions seriatim, but I will ask two or three together. I am an ignoramus so far as the Railway and Canal Commission is concerned. I do not know its constitution, but I do know what the difference is between principle and principal. For instance, I have my living to get, and I cannot take up the time to read all

this stuff which is sent to me, as it would take me all day. These are my questions. We have this present Railway and Canal Commission, which is what is called one tribunal. You are satisfied with that, and I think I follow you there. Now we propose to set up a different authority, called a tribunal, with an independent chairman of legal quality and with practical men on either side. I want to know, if you are not opposed to that, whether you would give them a broad seal of authority, and what powers they would have, supposing it were set up. Those are the questions I have to ask.—I think my answer to that would be, Given the tribunal.

8537. Yes, given the tribunal.—Assuming the tribunal—and I hope as regards that I have made my position clear, that while I do not advocate it I am very anxious on behalf of the railway companies to say if it is the wish of the traders and if it is the view of the tribunal, we certainly will say nothing against it; but there is all the difference between saying we think it very desirable and there is very great good to be got from it, and saying we will loyally fall in with it; but supposing the tribunal is fixed—speaking broadly, my view is that it should be limited as far as possible to individual cases, individual grievances, and individual wants, that do not raise big questions of principle.

8538. Without a risk of a mandamus against the tribunal?—I think you will have to get the lawyers to answer that. I imagine that any tribunal with limited functions must run the risk of being told in some way or other that it has got to keep within its functions. I do not know that you could do anything to prevent that, but subject to the fact that it is not exceeding its functions, certainly without any liability to be interfered with by anybody. We should accept that loyally, except where an appeal is reserved.

8539. *Sir John Simon:* That is to say, as I follow, in a general way, when it is dealing with an individual case, its decision would be final?—That is what I mean.

8540. *Chairman:* There is one matter I want to call your attention to. I asked some of the trader witnesses about bringing Scotland into line with England with regard to scales of rates. They were not able to tell me how the two compared. There have been got out diagrams which do show it. There was not time for them to be put on the Note to-day, as it takes some time to print these, but if I hold them up I think it will give you some general idea of them. This is Section B and this is Section C. In Scotland and in England, up to 100 miles, there is not a great difference. Beyond the 100 miles there is a marked difference.

The Witness: Those are maximum rates.

Chairman: Those are maximum rates before the addition. In the lower stages there was an appreciable difference, not a very big one, always in favour of England. England got a lower rate, but from the 100 miles they diverged very considerably.

Sir John Simon: The higher rate being Scotch?

Chairman: Yes, the higher rate being always Scotch. When the 50 per cent. was added that is what it looked like. I hope that when you are dealing with scales of rates you will do what you can to help us as to how we are to deal with Scotland, whether it is going to be possible to have uniformity of rate which includes both England and Scotland, bearing in mind such matters as those existing divergences. Scotland at present pays more, and the trader would no doubt like to come into the English rates; whether the railway can afford it or whether any arrangement can be made which would enable the railway company to afford it is one of the matters which I hope you will consider and help us upon.

Sir John Simon: Might I just ask this? The line which represents the Scotch charge we see clearly on the table. It is the steeper of the two lines.

Chairman: The Scotch is the red one.

Sir John Simon: Is that Scotch red line stating the charges in all the Scotch railways.

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Chairman: No, Caledonian, Glasgow and South-Western, and North British. The black line is the Great Northern, Great Western, and London and North-Western. The Highland Railway would be again a difficult problem.

Sir John Simon: The reason I put the question was this. We will do our best to get help for you about it, but are we to assume that the Scotch railways are unified into one body, or are we to assume that the distinction between the railways of a certain line is as shown on that chart?

Chairman: I am afraid I cannot answer that, but it seems to me it is quite possible they will be grouped together and, therefore, perhaps you might give us an answer on either assumption.

Sir John Simon: That would mean plotting also how the charges of the Highland and the Great Northern were.

Chairman: Yes, that is a matter which it will well within the railway companies' competence to do.

Sir John Simon: We can plot it.

Chairman: Up to this moment, I think we have had no assistance whatever as to what is to be done with regard to the Scotch railways. People have talked in a pleasant way about liking uniform and continuous rates and so on, and we all would like that, but here is this difficulty. Before we give advice to the Minister, we would like to know whether there is any way of getting over that obvious difficulty, so as not to run ourselves upon a rock, and advise something which is not practicable.

Sir John Simon: I am much obliged.

Mr. Jessop: And also whether it is possible to get uniformity in England as well, because one can quite appreciate there may be some difficulties there also.

Sir John Simon: I should have thought the same thing would arise, though not in quite so striking a form. I should have thought that if you were to take a coal line of South Wales and compare it with some agricultural line in the East of England you would have very great differences.

Chairman: That is a second and different difficulty, because that is a question of the same rates producing different results. But this is a Scotch one, and you have even different distances. The Scotch and North Eastern distances are 10 miles and 15 miles at the beginning, and the rest of the distance. The English ones are 20, 30, 50 miles, and the rest of the distance.

Sir John Simon: The thing I want to be clear about is this, as to the chart you have just been good enough to show us. Does that indicate the statutory maximum of these railways?

Chairman: The first one is the statutory maximum; the second one is the statutory maximum, plus percentages.

Sir John Simon: They both, therefore, represent not what is authorised in fact to be charged or what is in fact charged, but what would be authorised supposing they were all applied.

Chairman: No one can possibly prepare a diagram of the existing state of things, because we have such an enormous number of different rates to deal with before we can do that. One must work on the maximum, or scale rates, which we know are not quite that.

Sir John Simon: My reason for putting the question is, if the conclusion you arrived at was that the statutory maxima were to be swept away, even if we could not produce a diagram which made Scotland and England follow the same line, it would be a line which was going to be rubbed out for both.

Chairman: It is the standard that we want. Assume this to be the case. Assume that our advice is going to be taken, and suppose, we having advised it, it becomes law, that there should be one continuous uniform rate for England, and that the rate showed a number of figures set out in the schedule of the Act for Classes A, B, C, 1, 2, 3, 4 and 5, and those were the standard rates that were adopted for the whole of Great Britain continuously and uniformly. Is that a possible state of things?

Sir John Simon: I follow you.

3541. *Chairman:* We have got, in addition, the point which is obvious in England, that the Taff Vale carry mainly coal and the Great Eastern carry mainly agricultural produce, which it would be difficult to bring into line, though it is possible to be done, but we have to see whether the upsetting in the North-Eastern Railway and Scotland, which heretofore have had difficult distances as well as difficult rates, would be capable of being got over, without producing an undue disturbance, and so forth. I really want the railway companies to give us a suggestion as to where to advise uniform rates, if there are to be uniform rates, and how they are to be carried out.

Witness: Your question has reference to Classes 1 to 5 as well as A, B and C. The answer might be conceivably different as to those two classes?

Chairman: That is true again. In preparing this plan, Mr. Pike left out the minerals. He said we cannot compare coal between England and Scotland, because in one case they supply the waggons and in the other case they do not.

Sir John Simon: Do both diagrams refer to Classes B and C?

Chairman: Classes B and C.

Sir John Simon: May we have the diagrams?

Chairman: Certainly. I will hand them down to you. (Same handed.)

(Adjourned till to-morrow morning at 11 o'clock.)



